

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 **Kim Murphy**, Complainant against **Cst. Jonathan Edwards, Cst. Matthew MacIsaac, Cst. William Penfound, Cst. Myles Rattray and Cst. Barry Warnell** of **Halifax Regional Police**. Requesting a review of a decision made by Inspector Ron Legere dated June 23rd, 2023.

BEFORE:

Hon. Simon J. MacDonald, Vice-Chair
Peter Mancini, Board Member
Lisa Emery. Board Member

COUNSEL:

Kim Murphy, Self, Ms. Noreen Hartlen, Maya Vidovich, Lanell Murphy
Nasha Nijhawan, Counsel for the subject officers
Andrew Gough, Counsel for Halifax Regional Police

HEARING DATE:

February 10th - 13th, 2025
June 10th & 12th - 13th, 2025

DECISION DATE:

October 27th, 2025

[1] This matter arises as a result of a complaint by Dwayne Smith to the Halifax Regional Police, wherein he complained of being verbally and physically assaulted by Kim Murphy.

[2] This occurred on January 1st, 2023, at about 7:30 PM in the evening. In the course of the investigation, Ms. Murphy was arrested on the scene for domestic assault.

[3] She did not agree with this and the actions of the police officers. She laid a public complaint under the *Police Act* alleging discreditable conduct as described in her Form 5 complaint of January 6th, 2023. She did not specify any specific sections of the *Police Act* or Regulations that were breached by the officers.

[4] In the Notice of Allegations contained in the Form 8's, the following allegations of disciplinary default were filed against officers; Jonathan Edwards, Matthew MacIsaac, William Penfound, Myles Ratttray and Barry Warnell.

<u>Jonathan Edwards:</u>	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(7)	(a)	making an arrest without good or sufficient cause;
	24(7)	(b)	using unnecessary force on or cruelly treating any prisoner or other person with whom the member may be brought into contact in the course of duty;
<u>Matthew MacIsaac:</u>	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(7)	(b)	using unnecessary force on or cruelly treating any prisoner or other person with whom the member may be brought into contact in the course of duty;

<u>William Penfound:</u>	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(7)	(b)	using unnecessary force on or cruelly treating any prisoner or other person with whom the member may be brought into contact in the course of duty;
<u>Myles Rattray:</u>	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(7)	(b)	using unnecessary force on or cruelly treating any prisoner or other person with whom the member may be brought into contact in the course of duty;
<u>Barry Warnell:</u>	24(1)	(e)	being discourteous or uncivil to a member of the public, having regard to all the circumstances;
	24(3)	(a)	neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member;

[5] During preliminary conversations, it was agreed between the parties and the Board that Ms. Murphy suffered from a communication disorder, and ADHD. She requested that Ms. Noreen Hartlen speak on her behalf and as well, be her support person. She advised the Board that this was permitted in her child protection case before the Family Division of the Supreme Court. Counsel agreed to her request and the Board proceeded with Ms. Hartlen speaking on behalf of Ms. Murphy.

[6] The opposing parties agreed that Ms. Murphy's affidavit (Exhibit 1) would go in by consent as an accommodation for her communication difficulties. It was further agreed that the respondent officers could make submissions and final argument on the relevance of the affidavit to the issues and the weight that should be properly attributed to each exhibit.

[7] Ms. Hartlen confirmed that the information contained in the unsigned affidavit, entitled “Affidavit of Kim Murphy” is being submitted as argument, and not as evidence. The respondent Counsel agreed with this, however, reserving the right to respond in argument.

[8] It should also be noted that Ms. Murphy and her representative initially, and at various times throughout the hearing, wanted to address issues that were well beyond the mandate of the Board. The Board explained to the complainant and Ms. Hartlen that it did not have authority to investigate her complaints against other Courts, Boards, health bodies, Nova Scotia Bar Society, Legal Aid, nor have the power to appoint a disability advocate. They further argued as is evident in her post hearing brief, that she was asking not only for a full and fair review of her case, but “for systemic reform that address the structural gaps that allowed this to happen.”

The Board granted Ms. Murphy and Ms. Hartlen significant and meaningful accommodations during the hearing.

[9] The Board also allowed Ms. Murphy to tender evidence well after the trial began and outside the rules. As well, some of the exhibits Counsel agreed could be filed by Ms. Murphy without the required proof.

[10] Ms. Hartlen was given every opportunity to question and cross-examine witnesses. She was granted adjournments when requested, as well as when the Board felt she might need a break. Counsel for the respondents along with the Board gave Ms. Murphy substantial leeway to present her case.

[11] Opposing Counsel and the Board tried to calm Ms. Hartlen and Ms. Murphy when they became loud and demanding.

[12] It should be noted that on occasion, the Board had to speak to Ms. Murphy about her yelling, and jumping up and down when witnesses were testifying, because she would often direct her actions toward the witness or the Board. On occasions, the Board had to adjourn the hearing to allow Ms. Murphy to compose herself. The Board also had to speak to Ms. Hartlen about her persistently trying to address matters with the Board and witnesses over which the Board had no control. The typed words do not portray the loudness of the yelling, or show the way Ms. Murphy acted.

[13] Ms. Hartlen continued to speak on behalf of Ms. Murphy until they were unable to get along and agree on matters of questioning. Ms. Murphy sent an email to the Board in essence complaining of Ms. Hartlen's role. Ms. Hartlen subsequently wrote the Board by email dated May 29th, 2025, saying she no longer acted for Ms. Murphy.

[14] Ms. Murphy was given an adjournment to seek legal services or other help, and she subsequently approached PATH Legal. A representative of their office; Maya Vidovich, appeared and was allowed to partake on Ms. Murphy's behalf. After that day, PATH Legal advised they were not going to represent Ms. Murphy in this matter.

[15] The Board then asked Ms. Murphy's son; Lanell Murphy, if he would consider assisting his mother. He had been asked earlier and refused. At this time, he did say that he would help her and did so.

[16] Ms. Murphy expressed the opinion that the rules "don't apply to me because of my diagnosis."

[17] The Board accepts that Ms. Murphy has a communication disorder and considered that in the decisions we have reached. However, as Mr. Gough pointed out, during times she was

questioning witnesses, Ms. Murphy would be repetitive, not properly organized, very argumentative, but nonetheless, was able to ask questions that covered the subject matter of the hearing. For example, she asked the officers what they observed; she asked questions about their training, questions about their recollections and who they took statements from. She also asked questions to test their knowledge and observations. It was pointed out to the Board these were the type of questions counsel would typically ask. We agree.

[18] The Board has outlined the above because Ms. Hartlen and Ms. Murphy at the outset said this matter was going to be appealed as her Family Division Supreme Court matter would.

[19] The above is a brief summary of the actions of Ms. Murphy. It is hoped that the reviewing Court would be able to get an understanding of the difficulties which transpired during the hearing.

[20] The Board is ever mindful of the words of Cromwell, JA in **Kelly v. Nova Scotia Police Commission**, 2006 NSCA 27 where he said in paragraph 31 as follows:

“[31] Taking these factors into account, my conclusion about the Board’s duty of fairness is this. The Board is obliged to provide a complainant with a fair opportunity to prove his or her complaint. The complainant has a statutory right to call, examine and cross-examine witnesses for that purpose. These procedural rights, however, must be defined and applied bearing in mind that a very high level of fairness is owed to the officer who is the subject of the complaint. Moreover, the Board has considerable discretion to fashion its own procedures so as to strike a proper balance between providing the complainant a fair opportunity to present the complaint while at the same time affording the officer full procedural protection for the important interests he or she has at stake. The Board’s exercise of that discretion must be assessed in the specific context of the facts of the particular hearing.”

And further at paragraph 77;

“[77] I accept that, in general, a tribunal should provide reasonable assistance to a self-represented person. This statement by the Ontario Court of Appeal in the context of a family law case in court seems to me to aptly set out the duty on a tribunal as well:

36 ... The fairness of this trial is not measured by comparing the appellant’s conduct of his own case with the conduct of that case by a competent lawyer. If that were the measure of fairness, trial judges could only require persons to proceed to trial without counsel in those rare cases where an unrepresented person could present his or her case as effectively as counsel. Fairness does not demand that the unrepresented litigant be able to present his case as effectively as a competent lawyer. Rather, it demands that he have a fair opportunity to present his case to the best of his ability. Nor does fairness dictate that the unrepresented litigant have a lawyer’s familiarity with procedures and forensic tactics. It does require that the trial judge treat the litigant fairly and attempt to accommodate unrepresented litigants’ unfamiliarity with the process so as to permit them to present their case. In doing so, the trial judge must, of course, respect the rights of the other party. (**Dauids v. Dauids**, 1999 CanLII 9289 (ON CA), [1999] O.J. No. 3930 (Q.L.)(C.A.))”

To sum up, the Board provided Ms. Murphy with considerable help as a self representative complainant more so given her medical difficulties. It assisted her in providing and entering exhibits, examining witnesses, and even in asking questions of witnesses to ensure relevant matters were properly before the Board. It did so bearing in mind it had to be fair and reasonable to the other side. The Board rejects with her assertion in her post hearing brief that she was misunderstood and dismissed.

[21] The Board also notes that Counsel for the officers and Halifax Regional Police, were also fair and helpful to Ms. Murphy when presenting her case. An example of this was when Ms. Murphy and her representative Ms. Hartlen wanted to have a legal guardian appointed for Ms. Murphy. At that point counsel for the other side advised of the procedures that would be necessary and the ramifications. The Board and counsel gave Ms. Hartlen and Ms. Murphy time to consider if they wanted to go that route, and they decided not to do it.

Statutory Framework

[22] In the matter of **Borden v. Nova Scotia Police Review Board** 2024 NSSC 30, Boudreau,

J. outlines the statutory framework where she says at paragraphs 36-38 as follows;

“[36] The Board takes its authority to discipline officers from the Nova Scotia *Police Act* (S.N.S. 2004, c. 31) (the “*Act*”) and the provincial *Police Regulations*, N.S. Reg. 230/2005 (the “*Regulations*”). These provide a code of conduct for police officers, a complaints process, as well as a listing of possible disciplinary offences and penalties.

[37] Sections 71-79 of the *Act* provide the general procedure for complaints. I note the following particular sections for my purposes:

Referral to chief officer

71 (1) A complaint respecting the police department generally or the conduct of or the performance of a duty of a member of a municipal police department other than the chief officer shall be referred to the chief officer of that police department in accordance with the regulations.

(2) Upon receiving a complaint, the chief officer shall attempt to resolve the matter in an informal manner.

...

Report and referral to Complaints Commissioner

72 ...

(2) Where a complaint is not satisfactorily resolved by the chief officer and where the person making the complaint or the member of a municipal police force has requested a review of the decision by the Review Board, the complaint shall be referred to the Complaints Commissioner in accordance with the regulations.

...

Duties and powers of Complaints Commissioner

74 (1) Upon receipt of a complaint from the board or chief officer pursuant to subsection 72(2) of 73 (5), the Complaints Commissioner shall attempt to resolve the complaint.

...

(4) Where the Complaints Commissioner is unable to resolve the complaint, the complaint shall be referred to the Review Board in accordance with the regulations unless the Complaints Commissioner is satisfied that the complaint is frivolous, vexatious, without merit or an abuse of process, and the Review Board shall conduct a hearing in respect of the complaint.

...

Hearing de novo

78 A hearing by the Review Board shall be a hearing de novo and the parties to the proceeding may

- (a) appear and be heard and be represented by counsel;
- (b) call witnesses and examine or cross-examine all witnesses.

Powers of Review Board at hearing and decision

79 (1) At a hearing under this Act, the Review Board 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.

(2) The decision of the Review Board must be in writing and provide reasons and shall be forwarded to the parties.

(3) The decision of the Review Board is final.

...

[38] The *Regulations* at section 24 and following provide a “Code of Conduct” for police officers falling within its jurisdiction. The applicant noted in her submission before the Board that her complaints alleged breaches of sections 24(1)(b) and 24(7)(a) and (b).

Code of Conduct

24 (1) A member who engages in discreditable conduct in any of the following ways commits a disciplinary default:

...

- (b) contravening an enactment of the Province, a province or territory of Canada or the Government of Canada in a manner that is likely to bring discredit on the reputation of the police department;

...

- (e) being discourteous or uncivil to a member of the public, having regard to all the circumstances;

...

(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;

(7) A member who abuses their authority in any of the following ways commits a disciplinary default:

- (a) making an arrest without good or sufficient cause;
- (b) using unnecessary force on or cruelly treating any prisoner or other person with whom the member may be brought into contact in the course of duty;

....”

Law

[23] Justice Moir in **Symington v. Nova Scotia (Chairman of Police Review Board)**, 2002

NSSC 69 discussed the purpose of the *Police Act* where he said at paragraph 9;

“... In that regard, I am assisted by *White* and by *Wilms* which identified the dichotomous purpose of the disciplinary provisions of the *Police Act* and regulations. Its purpose encompasses “public protection from the abuse of police power and the protection of police officers from unwarranted disciplinary action” according to Justice

Saunders in *White*, and this includes “maintaining public confidence in the police force through a disciplinary process that involves sanctions against those members of the police force who engage in discreditable conduct” but balanced against “the protection of police officers against unwarranted disciplinary action” according to Justice Wright at para. 14 in *Wilms...*”

[24] It has long been established by the Board that complaints of this nature must be proven on a balance of probability.

[25] The Supreme Court of Canada discussed police discretion in the matter of laying charges in the case of **R. v. Beaudry**, [2007] 1 S.C.R. 190, 2007 SCC 5, and at paragraphs. 37-40 said;

“37 Nevertheless, it should not be concluded automatically, or without distinction, that this duty is applicable in every situation. Applying the letter of the law to the practical, real-life situations faced by police officers in performing their everyday duties requires that certain adjustments be made. Although these adjustments may sometimes appear to deviate from the letter of the law, they are crucial and are part of the very essence of the proper administration of the criminal justice system, or to use the words of s. 139(2), are perfectly consistent with the “course of justice”. The ability — indeed the duty — to use one’s judgment to adapt the process of law enforcement to individual circumstances and to the real-life demands of justice is in fact the basis of police discretion. What La Forest J. said in *R. v. Beare*, 1988 CanLII 126 (SCC), [1988] 2 S.C.R. 387, at p. 410, is directly on point here:

Discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid.

Thus, a police officer who has reasonable grounds to believe that an offence has been committed, or that a more thorough investigation might produce evidence that could form the basis of a criminal charge, may exercise his or her discretion to decide not to engage the judicial process. But this discretion is not absolute. Far from having *carte blanche*, police officers must justify their decisions rationally.

38 The required justification is essentially twofold. First, the exercise of the discretion must be justified subjectively, that is, the discretion must have been exercised honestly and transparently, and on the basis of valid and reasonable grounds (reasons of Chamberland J.A., at para. 41). Thus, a decision based on favouritism, or on cultural, social or racial stereotypes, cannot constitute a proper exercise of police

discretion. However, the officer's sincere belief that he properly exercised his discretion is not sufficient to justify his decision.

39 Hence, the exercise of police discretion must also be justified on the basis of objective factors. I agree with Doyon J.A. that in determining whether a decision resulting from an exercise of police discretion is proper, it is important to consider the material circumstances in which the discretion was exercised. However, I do not agree with him on the importance of the factors he regarded as part of the legal context, that is, the administrative directives and the administration of justice in the province.

4.1.1 Material Circumstances

40 First, it is self-evident that the material circumstances are an important factor in the assessment of a police officer's decision: the discretion will certainly not be exercised in the same way in a case of shoplifting by a teenager as one involving a robbery. In the first case, the interests of justice may very well be served if the officer gives the young offender a stern warning and alerts his or her parents. However, this does not mean that the police have no discretion left when the degree of seriousness reaches a certain level. In the case of a robbery, or an even more serious offence, the discretion can be exercised to decide not to arrest a suspect or not to pursue an investigation. However, the justification offered must be proportionate to the seriousness of the conduct and it must be clear that the discretion was exercised in the public interest. Thus, while some exercises of discretion are almost routine and are clearly justified, others are truly exceptional and will require that the police officer explain his or her decision in greater detail."

[26] This hearing involved the assessment of evidence, its credibility, and reliability. In that regard, the Board has followed the principles set forth by Bodurtha, J. in the case of **R v Burke**, 2024 NSSC 365 paragraphs 7 through 11 where he said as follows;

"[7] There is a difference between credibility and reliability. In *R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514 (Ont. C.A.), Doherty J.A. explained the difference at para. 33:

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the

witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. ...

[8] In *R. v. C. (H.)*, 2009 ONCA 56, 244 O.A.C. 288 (Ont. C.A.), Watt J.A. described the difference between credibility and reliability as follows:

41 Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe;

ii. recall; and

iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R v. Morrissey (R.J.)* (1995), 1995 CanLII 3498 (ON CA), 80 O.A.C. 161, 22 O.R. (3d) 514 (C.A.), at 526 [O.R.].

[9] The Court in *R. v. S. (D.D.)*, 2006 NSCA 34, summarized the principles governing credibility:

[77] Before leaving the subject and for the sake of future guidance it would be wise to consider what has been said about the trier's place and responsibility in the search for truth. Centuries of case law remind us that there is no formula with which to uncover deceit or rank credibility. There is no crucible for truth, as if pieces of evidence, a dash of procedure, and a measure of principle mixed together by seasoned judicial stirring will yield proof of veracity. Human nature, common sense and life's experience are indispensable when assessing creditworthiness, but they cannot be the only guide posts. Demeanour too can be a factor taken into account by the trier of fact when testing the evidence, but standing alone it is hardly determinative. Experience tells us that one of the best tools to determine credibility and reliability is the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a civil or a criminal case?

[78] In this regard I find it helpful to repeat the lucid observations of Justice O'Halloran in the oft-cited case of *Faryna v. Chorny* (1951), 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C. C.A.), at 356:

... But the validity of evidence does not depend in the final analysis on the circumstance that it remains uncontradicted, or the circumstance that the Judge may have remarked favourably or unfavourably on the evidence or the demeanour of a witness; these things are elements in testing the

evidence but they are subject to whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time; and *cf. Brethour v. Law Society of B.C.*, 1950 CanLII 346 (BC CA), [1951] 2 D.L.R. 138 at pp. 141-2.

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and *cf. Raymond v. Bosanquet* (1919), 1919 CanLII 11 (SCC), 50 D.L.R. 560 at p. 566, 59 S.C.R. 452 at p. 460, 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

[Emphasis in *S. (D.D.)*]

While his comments were not expressed in the context of a criminal trial, observations similar to Justice O'Halloran's have often been emphasized in criminal cases, with suitable allowance for the different standard of proof.

[10] More recently, in *Baker v. Aboud*, 2017 NSSC 42, Forgeron J. summarized additional principles governing a credibility assessment:

[13] Guidelines applicable to credibility assessment were canvassed by this court in paras. 18 to 21 of *Baker-Warren v. Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 100, which guidelines include the following:

- Credibility assessment is not a science. It is not always possible to “articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events.” *R. c. Gagnon*, 2006 SCC 17 (S.C.C.), para.20. ... “[A]ssessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization.” *R. v. M. (R.E.)*, 2008 SCC 51 (S.C.C.), para. 49.
- There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety: *Novak Estate, Re*, 2008 NSSC 283 (N.S.S.C.). On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence, *Novak Estate, Re, supra*.
- Demeanor is not a good indicator of credibility: *R. v. Norman* (1993), 1993 CanLII 3387 (ON CA), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55.
- Questions which should be addressed when assessing credibility include:
 - a) What were the inconsistencies and weaknesses in the witness's evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness's testimony and the documentary evidence, and the testimony of other witnesses: *Novak Estate, Re, supra*;
 - b) Did the witness have an interest in the outcome or were they personally connected to either party;
 - c) Did the witness have a motive to deceive;
 - d) Did the witness have the ability to observe the factual matters about which they testified;
 - e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorny*, 1951, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.);

g) Was there an internal consistency and logical flow to the evidence;

h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant or biased; and

i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[11] Finally, *Cameco Corporation v. The Queen*, 2018 TCC 195, is frequently cited by this Court for the law on distinguishing reliability and credibility at para. 11:

The reliability of a witness refers to the ability of the witness to recount facts accurately. If a witness is credible, reliability addresses the kinds of things that can cause even an honest witness to be mistaken. A finding that the evidence of a witness is not reliable goes to the weight to be accorded to that evidence. Reliability may be affected by any number of factors, including the passage of time. In *R. v. Norman*, 1993 CanLII 3387 (ON CA), [1993] O.J. No. 2802 (QL), 68 O.A.C. 22, the Ontario Court of Appeal explained the importance of reliability as follows at paragraph 47:

... The issue is not merely whether the complainant sincerely believes her evidence to be true; it is also whether this evidence is reliable. Accordingly, her demeanour and credibility are not the only issues. The reliability of the evidence is what is paramount. ...”

Alleged disciplinary defaults sections

Section 24(1)(a)

[27] Section 24(1)(a) describes this disciplinary default as discreditable conduct.

[28] Ms. Nijhawan in her post trial brief at page 22 sets out the correct test for disorderly or discreditable conduct where she quotes from **Popwell (Re)** 2023 Canlii 17131 at paragraph 22;

“The test for discreditable conduct is primarily objective. This was confirmed in *Popwell (Re)* 2023:⁶⁶

[22] The Board accepts the test for “discreditable conduct” is primarily

an objective one. In the matter of **Reiley v. O'Neill**, a decision of the Nova Scotia Police Review Board dated March 24, 2014 referred to as **O'Neill (Re)**, 2014 CanLII 12845 (NS PRB), the Board adopted the test for discreditable misconduct set forth in its earlier decision of **Ahigbe James v. Sergeant Kevin Smith** [2005]. At paragraph 51 in **Reiley**, *supra* the Board adopted the appropriate test for discreditable conduct as outlined by Paul Ceyssens' in his text, *Legal Aspect of Policing* wherein he stated at pages 6-16 the following:

Rather than making the difficult choice of which amount these approaches is appropriate for our case, we have combined elements from each and arrived at the following principles:

1. The test primarily is an objective one.
2. The Board must measure the conduct of the officer by the reasonable expectations of the community.
3. In determining the reasonable expectations of the community, the Board may use its own judgement, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprised of the circumstances of the case.
4. In applying this standard, the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time.
5. Because of the objective nature of the test, the subjective elements of good faith (referred to in the Shockness case) is an appropriate consideration where the officer is required by the circumstances to exercise his discretion."

[29] In short, the test is primarily an objective one and that the conduct must be measured against the reasonable expectations of the community.

Section 24(1)(e)

[30] This section deals with discourteous behaviour on behalf of the police officer. Some jurisdictions refer to this as discreditable conduct.

[31] In the case of **Campoli v. Toronto Police Service**, 2020 ON CPC 11 the Board found this required an objective test from the perspective of a reasonable person in the community and would involve some consideration of the context of the situation faced by the officers. The Board adopts this reasoning as required for the finding of a disciplinary default under this section.

Section 24(3)(a)

[32] In **Gottschalk v. Toronto Police Service**, 2003 Canlii 85796 (ON CPC) The Board set forth the requirements for proof of this disciplinary default as follows;

“52. The disciplinary offence of neglect of duty is found at section 2(1)(c)(i) of the Code. A police officer is guilty of such misconduct if he or she “without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force”.

53. As was noted by the Commission at page 1375 of Hewitt and Devine:

Essentially, this is a two part test. As the Commission stated in Soley and Ontario Provincial Police (1996), 3 O.P.R. 1098 (O.C.C.P.S.) at page 1100:

The charge of neglect of duty is a serious charge under the Code of Conduct. To be convicted of this charge, it must be shown that:

The member is required to perform a duty, and the member failed to perform this duty because of neglect, or did not perform the duty in a prompt or diligent manner.

Once proven, the member, to avoid discipline, must show that:

[The member] had a lawful excuse for not performing the duty in the prescribed manner.

54. This standard has been adopted in a number of Commission decisions.”

Section 24(7)(a)

[33] This section deals with the abuse of authority.

[34] Paul Cessyens in *Legal Aspects of Policing (volume 2, Earls court Looseleaf Edition to January 2003)* said at page 6-84;

“This discipline offence of abuse of authority is referred to as “unlawful or necessary exercise of authority” in some jurisdictions. It consists principally of two issues: unlawful and unnecessary arrest; and unnecessary force. Some disciplinary schemes include disrespectful behaviour and similar conduct as a further category of abuse of authority. In some jurisdictions, such as BC the Code of Professional Conduct provides that a police officer commits abuse of authority where he harasses, humiliates or retaliates against a person who made a report about the conduct of an officer.”

Section 24(7)(b)

[35] This section deals with excessive use of force.

[36] In **R v. Galloway**, 2007 NSSC 71. Although deciding a criminal matter Pickup J. accepted the principles set forth at paragraph 74,

“[74] In considering the second count, the learned trial judge considered the British Columbia Provincial Court’s decision in *R. v. Hannibal* (2003) B.C.P.C 504, stating at para. 36:

In *R. v. Hannibal* (2003) B.C.P.C. 504, the court considered the actions of an officer charged with an offence contrary to section 267(a) who employed a tazer without warning upon an individual already being successfully restrained and controlled by three other officers. After considering section 25 of the *Criminal Code* and canvassing several decisions, Challenger, P.C.J. stated at paragraphs 142 - 144 of the decision:

It is trite to say that a police officer or anyone reacting to a situation in which force is required cannot be expected to measure the level of force used with exactitude.

In determining whether excessive force was used, it is the reasonable belief of the officer in all the circumstances as they existed at the time, which belief must be justified by the facts at the time. The reasonableness of the officer’s belief must be subjectively held, as well as objectively reasonable.

The court is not bound to accept or approve of the actions of officers merely because they acted within police determined guidelines. However, this is clearly one of the circumstances that must be considered in determining the reasonableness of the officer’s belief and actions.”

[37] In the case of **Morris (Re)**, 2021 Canlii 122156 (NSPRB), in discussing the actions of the police officer, when making an arrest, the board said at paragraph 28;

“[28] Although the actions of the police officers in this matter do not resemble those in the case of **R. v. Crocker**, 2017 NLTD(G) 176 and **R. v. Dunne**, 2014 MBPC 60, the Board is cognisant of the words of Anderson J.A. in **Bottrell v. R.** (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C. C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

This passage was also referred to in **R. v. Nasogaluak**, 2010 SCC 6, [2010] 1 S.C.R. 206.”

[38] The Halifax Regional Police IPV Policy is as follows;

7 INTIMATE PARTNER VIOLENCE

Departmental Order #: 11 -12 (Previously issued under DO #s 27-04, 23-03, 19-02, 45-98, 8-97 and 29-96)

A. POLICY STATEMENT

1. Section 7 deals with intimate partner incidents and domestic disturbances, the procedure stipulating the responsibilities of personnel responding to these incidents and includes the procedures for the laying of charges privately, application for a peace bond and the procedures involving incidents of child abduction where parents are involved in divorce proceedings or where a Custody Order is in effect.
2. Intimate partner violence is a serious societal problem which requires focused special attention and sensitivity of police officers and other justice system personnel and service providers. Therefore, the investigation of intimate partner violence and related incidents shall stress that domestic violence is criminal conduct and any request for assistance involving intimate partner violence is the same as any other request for assistance where violence or potential violence occurs.

B. DEFINITIONS

1. Domestic Disturbance: for the purposes of this section, refers to a breach of the peace or the commission of a criminal offence involving disturbances between siblings, parent(s)/child(ren) or other extended family members such as grandparents/grandchildren.
2. Domestic Violence Case Coordinator: refers to the person designated to work with police agencies in meeting the objectives of the Domestic Violence Case Coordination Program for cases deemed to be high risk. The HRM Domestic Violence Case Coordinator is located within HRP Victim Services Section.
3. Dominant Aggressor: is defined as a person who it has been determined by a thorough investigation has used the most significant rather than the first use of force and because of provocation causes the second party to act in self-defence. Where a Dominant Aggressor is identified, guilt of the second party is unfounded and it is in the public interest not to prosecute the second party. Other factors which can lead to a determination of the dominant aggressor are:
 - a. Past call or criminal history of participants.
 - b. Physical size of the persons involved.
 - c. Control or domination by one of the persons involved.
4. Emergency Protection Order (EPO): is an order made pursuant to the Domestic Violence Intervention Act. EPOs granted by a Justice of the Peace are intended to ensure the immediate protection of a victim of domestic violence.
5. High Risk: refers to a designation assigned to an intimate partner violence case that indicates a concern of the potential lethality of either partner. The designation of High Risk is based upon but not limited to risk factors for lethal use of force which have been specified by the investigating officer(s) in the completion of the ODARA form.
6. High risk Case Coordination Program: is a provincial program designed to enhance the capacity of police to deal with high risk intimate partner incidents which have the potential to escalate or end in catastrophic results.
7. Intimate Partner Relationship: for the purposes of this policy involves any relationship between spouses or partners (including same sex relationships) who are or have been involved in an intimate relationship that has been defined by a legal marriage, commonlaw marriage, dating relationship or domestic partnership.

8. Intimate partner violence: for the purposes of this policy can include:
 - a. Property damage.
 - b. Harassment.
 - c. Stalking.
 - d. Physical, emotional and/or economic threats to the partner, children, friends and/or pets.
 - e. Any criminal activity that is an attempt to control or influence dominance within an intimate partner relationship.
 - f. Intimidation.
 - g. Any other form of assault or violence not specified above.
9. Primary Service Providers: includes all Justice System personnel who may become involved with providing services to victims and accused persons of high risk intimate partner violence incidents. These providers include: Police, Victim Services, Child Welfare, Transition Houses, Men's Intervention Programs and Correctional Services.

C. POLICY

1. The police role in an intimate partner dispute is to restore peace and to enforce the law. Crucial to this role are the qualities of tact, patience and neutrality.
2. Officer Safety must always be considered when dealing with an emotional incident such as an intimate partner assault as the complainant can quickly turn to an aggressor.
3. Members shall be dispatched to all calls relating to intimate partner violence and are responsible to fully investigate the incident before leaving the scene of a call.
4. In all incidents involving intimate partner violence:
 - a. A proper preliminary investigation shall be conducted before responding members leave the scene of a call, including but not limited to taking statements from all witnesses and complainants regardless of whether charges are laid and processed through the courts. Rules of statement-taking are applicable here and members must concern themselves with the special needs of witnesses (i.e., written statement cannot be obtained due to illiteracy, language inability, age, mental incompetency, etc.).
 - b. A General Occurrence Report containing a Domestic Study Flag shall be submitted for all incidents including those where the responding officer(s) have not laid a charge. An ODARA Text

Template shall be completed and form part of the General Occurrence Report.

- c. When the file has been classified by the officer as a High Risk for Lethality file, state same at the beginning of the GO Report. In those incidents where charges are not laid, the officer shall document the reason(s) for the decision NOT to lay charges.
 - d. When at least one of the intimate partners involved is a police officer, the Duty Officer shall be notified as per Serious Incident Response Team (SIRT) investigations. S/he shall ensure the SIRT Director is notified as soon as practicable.
5. Where the investigating officer deems the case to be high risk for lethality based on the completion of a proper preliminary investigation and an ODARA Form with a score of 7 or higher, the Domestic Case Coordinator shall be utilized to coordinate information-sharing among all Primary Service Providers.

D. GENERAL

- 1. Sections of the Criminal Code of Canada which relate to the issue of intimate partner violence include, but are not limited to, the following:
 - a. Assault - Section 265
 - b. Assault with a Weapon - Section 267(a)
 - c. Assault Causing Bodily Harm - Section 267(b)
 - d. Aggravated Assault - Section 268(1)
 - e. Sexual Assault - Section 271
 - f. Sexual Assault with Weapon or Causing Bodily Harm - Section 272
 - g. Aggravated Sexual Assault - Section 273(1)
 - h. Peace Bond and Provisions - Sections 810
 - i. Breach of Court Order - Section 127(1)
 - j. Mischief - Section 430
 - k. Forcible Entry - Section 72(1)
 - l. Forcible Detainer - Section 72(2)
 - m. Criminal Harassment - Section 264
 - n. Threats - Sections 264.1 (uttering) & 423(1)(b) (intimidation by)

- o. Stalking - Section 423(1)(c)(e)
 - p. Property Damage - Section 430(4)
2. Forcible entry and forcible detainer may be used in intimate partner incidents when forced entry into real property has caused a breach of the peace.

E. IES

1. IES personnel receiving a complaint of intimate partner violence shall:
- a. Dispatch two officers (where possible) to respond to and investigate the call.
 - b. Check premise history and records inquiry of parties involved (if identities have been confirmed) to determine the information listed below. Then advise responding officers of tile results as soon as practical and the seriousness of the call as gained through listening to the tone of the caller's voice and any background noise. The results of the queries should include:
 - i. past intimate partner violence incidents at that location and/or between the involved parties;
 - ii. criminal record;
 - iii. pending charges;
 - iv. conditions of release;
 - v. the existence of parole, probation and conditional sentence orders, No Contact orders, peace bonds, Emergency Protection Orders;
 - vi. weapons prohibitions; and
 - vii. outstanding warrants.
 - c. Add/modify a Premise History immediately indicating the location, date and time of the call and the names of all involved parties (where known) for the current incident.
 - d. Relay the following information to responding officers as it is obtained from the victim, including but not be limited to:
 - i. drunkenness, violence, weapons, injuries, etc.;
 - ii. name, date of birth and physical description of suspect;
 - iii. existence of court orders against the suspect;

- iv. length and type of relationship between the victim and suspect;
 - v. presence of children or other family members during alleged offence;
 - vi. any other pertinent details relating to the incident and any previous history of past violence.
 - e. Maintain telephone communication with victim if/ he is being threatened and immediate response is necessary. In these cases, personnel may suggest reasonable safety precautions to be taken by the victim while awaiting the response unit's arrival.
 - f. Dispatch back-up units when the incident requires additional officers.
 - g. If available, advise the duty Victim Services Workers (VSWs) of the location of the call and the names of the officers dispatched to the call. Dispatch the VSWs on the call when requested by the investigating officers.
2. Upon receiving a request for assistance from a suspect after the conclusion of the index incident to return to the victim's home and retrieve personal belongings, the Dispatcher shall:
- a. Query the suspect on CAD for any previous requests to return to the victim's address with police assistance to retrieve personal items. If the check determines the suspect has returned to the address on an earlier date for the same reason, contact the Squad Sergeant to determine if members will attend and, if so, enter this activity on the call then modify the Premise History to document all such requests from a suspect.
 - b. If it is a first request, inform the suspect that police assistance will be provided on one occasion only and only if the victim is in agreement or an undertaking exists directing police presence and operational needs permit.

F. INVESTIGATION AT THE SCENE

1. Officers responding to an intimate partner violence complaint shall proceed to the location of the call as expeditiously as possible obtaining all available information from the Dispatcher. Upon arrival, advise the Dispatcher, evaluate the situation and respond appropriately.
2. When conducting the preliminary investigation, obtain all details concerning the

history of the relationship, noting previous incidents (with/without violence) or other related actions (reported/unreported incidents) revealed by a check of the RMS.

3. Where there has been an assault or threats with a weapon in hand, submit an ODARA Text Template as part of the General Occurrence Report.
4. If children are on scene, ensure they are interviewed as to their exposure to the index incident or any previous incidents. If there are no children present but it is determined they are residents of the dwelling, complete a Child Welfare Referral Form and fax it to the appropriate child protection agency by the end of the shift. Include the hardcopy of the form in the Investigative File Folder as per established policy. If officers determine the children:
 - a. are in need of protective services as defined in Section 22(1) CFSA, forthwith report the determination to the appropriate child protection agency;
 - b. are NOT at immediate risk of abuse, document the circumstances in the GO Report.
5. When available and the situation is safe, request Victim Services attend. In no case where the offender has not yet been arrested and placed in custody will the duty VSWs be requested to attend. Upon Victim Services arrival, brief the VSWs on the circumstances surrounding the incident.
6. Where threats to use firearms, the presence of firearms or other offensive weapons are realized, comply with established policy on FIREARMS AND OTHER OFFENSIVE WEAPONS.
7. When there have been previous intimate partner incidents between involved parties that have included threats and/or violence, special circumstances exist in an incident or an incident is serious enough to warrant, obtain KGB video statements from the victim and witnesses. See VIDEO STATEMENTS Whenever possible, obtain a cautioned statement from the suspect.
8. During the investigation and follow-up of all intimate partner assaults, complete HRP38, to ensure all information and evidence has been collected. Refer to INTIMATE PARTNER ASSAULT INVESTIGATION CHECKLIST.
9. When photographs are required of the victim's personal injuries whether or not property damage or scene evidence is applicable, the duty Forensic Identification member is to attend the scene. If no Forensic Identification member is available, submit an ROSS to ensure the work is completed either by a member attending or the victim reporting to the Headquarters building.
10. Lay a charge if any evidence exists and there are reasonable grounds to believe

that an offence has been committed regardless of the wishes of the victim. When charges are laid, advise the victim:

- a. and the accused that the victim cannot withdraw the charge. Withdrawal of the charges is the responsibility of the Crown;
- b. that a member of the HRP Victim Services Unit will be contacting him/her by phone;
- c. of his/her right to file a Victim Impact Statement with the Regional Office of Victim Services.

11. If a victim indicates a concern for his/her safety and does not wish to be contacted by phone:
 - a. provide him/her with the HRP Victim Services Unit and the Provincial Department of Victim Services business cards and inform him/her to contact the number for additional help;
 - b. indicate in the GO Report not to contact him/her by phone;
 - c. advise him/her of:
 1. the Emergency Protection Order process (where the victim's safety is in immediate danger) and the ability of Transition House staff to assist the victim with the application;
 2. where no immediate threat or danger exists of the availability to apply for a peace bond against the suspect. Direct him/her to contact the Provincial Victim Services Division for assistance with a peace bond application.
12. In all cases where the police officer has reasonable grounds to believe that there will be a continuation or repetition of the offence (including a violation of a "No Contact" order, peace bond or civil restraining order or release condition) or other grounds for arrest exist, arrest the accused immediately. In this instance, the accused shall not be released on an Appearance Notice.
13. When it is in the best interest of resolving an intimate partner violence dispute by having one or both of the participants leave the scene until the situation has calmed, officers may assist either party in being transported to a safe local destination.
14. Assist in the prevention of breaches of the peace and/or an Undertaking, making it clear to the requesting party what HRP policy is on police assistance with the removal of items from the residence (Investigators should be aware of the

provisions of Section 329 CC, Theft by Spouse, in this circumstance) and the temporary relocation of either party from the residence.

G. DETERMINING DOMINANT AGGRESSOR

1. It is HRP policy that dual arrests in intimate partner violence incidents are discouraged. Therefore, when officers investigating an intimate partner violence incident encounter what appears to involve assaults by both parties, the investigating officer should:
 - a. Conduct a proper preliminary investigation to assess if the assault inflicted by the victim actually involved a case of self-defence.
 - b. Where possible, identify, charge and arrest, where reasonable and probable grounds exist, only the dominant aggressor. Officers should be prepared to articulate in the Crown Brief Summary their observations and the reasons which they believe support their decision to arrest the dominant aggressor only.
2. Cross-charging shall not be considered by the investigating officer until a preliminary investigation is completed, and the officer has consulted with his/her Squad Sergeant.

H. DUAL ARRESTS

1. In some instances, upon completion of a preliminary investigation, dual arrests may be warranted. In this instance, investigating officers shall be prepared to articulate the reasons which supported their decision to dual charge. Cross-charging and dual arrests based on a cursory investigation are discouraged.
2. When dual arrests are made against both partners after a preliminary investigation has been completed, investigating officers shall advise at the beginning of the Initial Officer Report and Crown Brief Summary that there will be two files, one with charges against one partner (specify the person's name) and a second file with charges against the other partner (specify the person's name). A separate GO Number will be used for each file and the files shall be linked.

I. LAYING OF CHARGES AND RELEASE OF ACCUSED

1. When an investigator charges an accused and wishes conditions of release to be imposed upon him/her i.e., no contact with the complainant/victim, etc.), review the incident with the member's Squad Sergeant prior to releasing the accused or requesting bail.

2. When releasing an accused, the following points must be kept in mind:
 - a. DO NOT release the accused by way of an Appearance Notice;
 - b. for offences under Section 553 CC, release the accused on a Promise to Appear and an Undertaking with conditions.
 - c. for any offence under Section 469 CC and prior to bringing the accused before a Justice of the Peace for release, consult with the Crown and relate the facts of the case to him. When the Crown believes the accused should be released on conditions of an Undertaking with conditions, make note of the conditions stipulated by the Crown and ensure they are conveyed to the Justice of the Peace.
3. When an accused is held for arraignment on the charges, provide the Crown as soon as practical after laying charges with advice on the terms and conditions of bail, release or continued custody of the accused and specifically, the investigation findings and results of the ODARA.
4. Where a member becomes aware of a victim's reluctance to testify:
 - a. submit a Supplemental Text on the GO Report and include all relevant information;
 - b. notify the Crown and convey all relevant information;
 - c. forward information to the Victim Services Coordinator as soon as practical to ensure contact can be made with the victim.
5. Include all information and evidence as per established policy on CHARGE FILES.
6. Update the victim on any conditions of release stipulated in an undertaking and on the status of the case as it changes and progresses through to case closure, making the appropriate Supplemental Text entries after each update.

J. QANCO

1. When reviewing intimate partner files, QA NCO shall:
 - a. Review all files for compliance with policy and procedure.
 - b. Ensure a Geneal Occurrence Report is submitted for all files regardless of whether charges are laid and:

- i. the investigating officer submits an ODARA Text Template where an assault has occurred and/or a threat with weapon in hand has been made;
- ii. the victim is added to the SIP Category on CPIC as soon as practical;
- iii. a CAD Hazard is created/modified to flag the incident as high risk;
- iv. all required reports and case activity are completed by the end of the shift.

K. WATCH COMMANDER

- 1. Upon a request for the services of a duty FIS member to photograph a victim for injuries, assess the circumstances and determine if the FIS member should be dispatched. Notify the requesting member of the decision as soon as practical.
- 2. Any requests for VSWs to attend calls for any purpose other than intimate partner disputes must first be approved by the Watch Commander. Further, the Watch Commander will address all problems or concerns that arise during the VSW tour of duty.

L. FIS MEMBER

- 1. When authorized by the Watch Commander, the duty FIS member shall proceed to the scene of an intimate partner assault and photograph all injuries sustained by the victim and the condition of and any apparent property damage or evidence at the scene.

M. VICTIM SERVICES COORDINATOR

- 1. The Victim Services Coordinator will:
 - a. Extract each weekday morning all intimate partner violence reports to which police responded on the previous day(s).
 - b. Provide all new GO Reports to staff and program volunteers.
 - c. Ensure a CAD Hazard Record is entered on each reported high risk intimate partner incident.

2. Where the circumstances of an incident indicate the file meets the definition of high risk for lethality, the Victim Services Coordinator shall ensure:
 - a. The Domestic Violence Case Coordinator coordinates appropriate services for the victim and/or accused.
 - b. The victim has been added on CPIC under the SIP Category as soon as practical.
 - c. The CAD Hazard Record reflects the designation of high risk for lethality.
 - d. All actions taken are documented via Supplemental Text on the GO Report.

N. VICTIM SERVICES MOBILE UNIT

1. The duty VS Mobile Unit will patrol the jurisdiction of HRP during the designated hours and shall:
 - a. Upon arrival for the shift review all files and messages from the Victim Services Coordinator, obtain and inspect all issued equipment for the unit, attend a briefing and log on to the system via the Dispatcher and advise all patrol units promptly of the unit's availability.
 - b. Respond to all intimate partner violence calls when dispatched. Upon arrival, the VSWs will:
 - i. ensure they are promptly briefed by the investigating officers or hospital/agency staff where appropriate;
 - ii. obtain authorization before speaking to the victim;
 - iii. only enter upon the scene after it has been determined it is safe and the offender has been apprehended and is in custody. Response to any other calls must first be authorized by the Watch Commander.
 - c. Offer the following whenever in contact with a victim:
 - i. emotional support;
 - ii. crisis intervention;

- iii. referral to community agencies for additional support;
 - iv. when on scene and where required, coordinate transportation to a safe location.
 - d. Prior to the end of the shift, complete appropriate reports for each call.
 - e. Between calls, complete existing assignments, attend relevant meetings and conduct community relations work.
 - f. Refer all concerns encountered during the shift to the Watch Commander.
 - g. Adhere to all established safety procedures and related HRP policies and procedures while performing unit duties.
2. The duty VSWs should only decline to respond to an incident when:
- a. The Watch Commander refuses a request by an officer for the duty VSWs to attend a call that is not an intimate partner violence incident.
 - b. The VSW's shift has ended after the receipt of an intimate partner call and the VSW determines the seriousness of the call does not require an immediate response. In this situation, the VSW will add a Supplemental Text to the GO Report before leaving and indicate why immediate response was not offered.
 - c. The situation appears to be dangerous or unsafe.
 - d. It is not authorized by the Watch Commander or is outside the normal duties of the VSW. Where possible, suggest alternative types of service.

O. VICTIM SERVICES STAFF

1. The HRP Victim Services staff shall be available upon the request of responding officers to attend intimate partner calls during weekday business hours.

P. DOMESTIC CASE COORDINATOR

1. The Domestic Case Coordinator will review all ODARA Forms with a score of 7 or higher and share the information with primary service providers. S/he shall then document all actions taken on each high risk file in a Supplemental Text on the GO Report.

Q. COURT SECTION

1. When any file involving intimate partners is completed and forwarded to the Court Section for court processing, Court Section staff shall ensure a note is placed on the front of each file that clearly identifies the file as, "Intimate Partner Violence".

R. CPIC TRANSCRIPTION STAFF

1. The CPIC Transcription Staff shall:
 - a. Facilitate all requests for entries of intimate partner victims in the SIP category of CPIC. See related duties in VICTIM FIRST EMERGENCY CELLULAR TELEPHONE SERVICE.
 - b. Ensure any Court Orders (i.e., recognizances, No Contact Orders, Undertakings, Emergency Protection Orders, etc.) facilitated by HRP are added to CPIC as soon as practical.

Findings and Conclusion

[39] On the evening of January 1st, 2023, Kim Murphy (Ms. Murphy) and her friend/partner Dwayne Smith (Mr. Smith) had been arguing earlier in the day. She went to Mr. Smith's home to collect some of her belongings. At that time a further argument ensued, and Mr. Smith called the Halifax Regional Police. He told the police that Ms. Murphy was tearing apart his home and that she had assaulted him.

[40] Cst. Jonathan Edwards and Cst. William Penfound received the call from dispatch, and were the first two officers who arrived at the scene.

[41] When Cst. Edwards and Cst. Penfound arrived, they found Mr. Smith sitting on his front step and Cst. Edwards was able to see a cut under Mr. Smith's left eye with blood running down his face. Mr. Smith told the officers that he wanted Ms. Murphy removed from his home.

[42] During the course of this conversation, Ms. Murphy came out the door and began yelling at the police officers alleging that Mr. Smith “was a mechanic, was stronger and committed battery” on her.

[43] Cst. Edwards directed Mr. Smith towards the driveway to get his story, while Cst. Penfound decided to speak with Ms. Murphy. He followed her into the residence and asked her what happened. She kept on yelling, but advised Cst. Penfound that she had gotten into an argument over text messages she found on Mr. Smith’s phone. She told Cst. Penfound that she had actually kicked Mr. Smith.

[44] Another party who was present named Jeremy Gillard, (Mr. Smith’s roommate) said that he saw the two people arguing, but didn’t see any assault, and he refused to provide a statement to the police. This was of no help to either Mr. Smith or Ms. Murphy.

[45] Cst. Rattray arrived on scene at about 7:45 PM. He took a statement from Mr. Smith, as well as observed the cut on Mr. Smith’s left eye and blood on his face. At this point, Cst. Edwards went inside the residence. He spoke with Cst. Penfound and made the determination that Ms. Murphy was the dominant aggressor and should be arrested and charged with assault.

[46] The Halifax Regional Police have an Intimate Partner Violence (IPV) Policy, which requires that charges be laid once the dominant aggressor is identified, and reasonable grounds exists to believe an offence has occurred.

[47] When Cst. Edwards advised Ms. Murphy she was under arrest for assault, she replied “no I’m not”. She was seated on the chesterfield at the time and refused to get up. As Cst. Edwards attempted to arrest her; she pulled back and stood up. After asking her several times to put her hands behind her back, she kept insisting she was not under arrest. She tried to break free from

both Cst. Edwards and Cst. Penfound who had to get her to the ground and in a prone position to control her. She kept struggling and “banging her head on the floor”, according to the Constables. Cst. Edwards told her more than once to stop resisting arrest and she refused.

[48] They eventually got the handcuffs on her. Cst. Rattray observed Ms. Murphy resisting arrest and he advised dispatch that a police vehicle would be required because they arrived in an ERT vehicle which was full of gear and not the type of police vehicle to transport prisoners.

[49] Records reveal that Cst. Feltmate and Cst. MacIsaac were dispatched to the scene and arrived at 7:48 PM. They left with Ms. Murphy at 7:53 PM.

[50] Cst. MacIsaac, when escorting Ms. Murphy to the police vehicle said she was out of control, yelling, screaming, resisting and not following commands. He assisted Cst. Edwards and Cst. Penfound in placing Ms. Murphy in the police cruiser and then transported her to the Prisoner Care Facility.

[51] She was released from booking on an undertaking. However, at the request of Ms. Murphy, EHS attended the Prisoner Care Facility and transported her to the QEII Halifax Infirmary. She was also described as being difficult, yelling, and would not follow instructions at that time. She refused to leave the hospital after being discharged. Consequently, Cst. Veer-Casey and Cst. Lamphier were dispatched to the QEII hospital. The Constables convinced her to take a taxi home, and contact the non-emergency police number in the morning. She agreed to do so. Cst. Veer-Casey advised that Ms. Murphy was still belligerent, talking over the officers and continued saying that Mr. Smith assaulted her.

[52] Records reveal that at 7:51 AM on January 2nd, 2023, dispatch received a call from a corner store advising Ms. Murphy had entered and requested that they call the police. She said she had been assaulted the night before and wanted an ambulance.

[53] Cst. Barry Warnell was dispatched to the Expressway food corner store in Dartmouth at 8:06 AM. This was the first time he became involved with Ms. Murphy. Upon his arrival, he found Ms. Murphy sitting in the parking lot, hyper, talking fast and loudly, and saying that the police had no right to arrest her the night before. According to Cst. Warnell, she told him she was assaulted, and wanted the police officers who arrested her to be charged with assault and to be fired.

[54] She made the allegation that Mr. Smith had punched her while she was sitting on the couch the evening prior. Cst. Warnell called for EHS to attend and transfer Ms. Murphy to the care of the Dartmouth General Hospital.

[55] Upon arrival at the Dartmouth General Hospital, Cst. Warnell testified that the nurses had advised him that Ms. Murphy was loud, yelling, and was moved into a hallway. Cst. Warnell spoke with her, and Ms. Murphy again requested that the assault from the night prior be re-investigated. Cst. Warnell advised Ms. Murphy that once she was released from the hospital, he would come get her and take her statement.

[56] Later that day, Cst. Warnell met Ms. Murphy at the police “sub-office” where he took her statement regarding her allegation that Mr. Smith had assaulted her.

[57] In her statement, Ms. Murphy said that when she got to Mr. Smith’s house on January 1st, 2023, she had a cold shot of beer and that Mr. Smith pushed the table in the living room, causing it to spill on the floor. Mr. Smith went to the bathroom and then Ms. Murphy got his phone,

erased messages she had sent to him earlier, and found one from a woman. She challenged Mr. Smith on that, and he told her to leave. In the course of this conversation, Mr. Smith couldn't find his wallet, and he thought Ms. Murphy took it. Ms. Murphy said that during this argument, Mr. Smith punched her and she "saw stars" and he punched her again. She said that she used her legs to push him off, then put her purse in the car. She re-entered the home to get some cans in the cupboard. She told Cst. Warnell in her statement that she might've scratched Mr. Smith's face because he was attacking her and that she probably swung at him in self defense.

[58] Cst. Warnell testified that he sat in the front of his police cruiser typing Ms. Murphy's statement, and Ms. Murphy sat in the back seat. When he finished typing her statement, he asked her to sign it. Ms. Murphy became agitated and said, "I'm not signing nothing". She then presented Cst. Warnell with a note that she had written herself, "The ambulance told me, he hit my head so hard, it caused my vessels to break" and demanded that he sign her note. Cst. Warnell refused and decided that rather than get into another altercation with her, he would leave her sitting in the police car with the back doors open and the front seats secured. He watched her through the window of the police sub-office, and she eventually left.

[59] Cst. Warnell had launched and completed a second investigation into the incident between Ms. Murphy and Mr. Smith. He said he took statements of both parties and at the end, he concluded that he had no grounds to charge Mr. Smith with respect to the incident.

[60] The Board proposes to deal with the allegations against each of the officers separately.

Allegations against Cst. Jonathan Edwards

[61] Ms. Murphy's complaint against Cst. Edwards is that he violated sections 24(1)(a), 24(7)(a), 24(7)(b) of the Police Code of Conduct.

[62] The Board finds that when Cst. Edwards arrived on the scene, he observed what was going on and first approached Mr. Smith. Mr. Smith told him that he was injured by Ms. Murphy, and it was obvious to Cst. Edwards that he was scratched and bleeding. In assessing whether or not to charge Ms. Murphy, he spoke with Cst. Penfound who was inside with Ms. Murphy. After talking to Cst. Penfound, and his assessment of the situation, he concluded that Ms. Murphy was the dominant aggressor. He was aware of the domestic violence policy of the province and its statement as the dominant aggressor, he was obligated to arrest her.

[63] Cst. Edwards smelled alcohol off her breath and concluded she might've been intoxicated. He also was made aware of Ms. Murphy opening a cold shot beer which spilled on the living room floor during the altercation with Mr. Smith. Ms. Murphy was verbally abusive to the police officers, he saw the injuries on Mr. Smith as a result of striking Mr. Smith.

[64] Ms. Murphy on the other hand, said it was Mr. Smith who was the aggressor and who was intoxicated. She wanted him charged and said that he had struck her. She also said she suffered head injuries, but that could've been from banging her head on the floor as described by the officers.

[65] Ms. Murphy argued as well that the police officers should have recognized her diagnosed communication disorder which affected her. However, the police officers were not aware of her communication disorder. She argued the police officer failed to understand her distress, and

trauma after she said she was assaulted. Cst. Penfound attributed her actions and words to her intoxication.

[66] Cst. Edwards said he observed Mr. Smith cut and bleeding. The officer said there was a strong smell of alcohol coming from Ms. Murphys mouth and that her level of intoxication along with her behaviour helped him to arrive at his conclusion. He had no knowledge of Ms. Murphy's disorder. He acted upon what was in front of him.

[67] Given the circumstances existing at the time, the Board finds that Cst. Edwards had no choice, but to charge Ms. Murphy, as he found her to be the dominant aggressor under the IPV Policy. The Board finds that it is clear he did not make a rush to judgment, but rather he took time to observe the situation and made a judgement call based on his investigation. The Board finds as a fact, that in the circumstances, he used his discretion properly as required in *Beaudry* (supra).

[68] As far as the arrest is concerned, the evidence reveals that after Ms. Murphy was told she was under arrest, she clearly resisted. The Board finds as a fact, Cst. Edwards and the other officers used appropriate police techniques based on the evidence to obtain control and affect arrest without causing undue harm to Ms. Murphy.

[69] Considering the totality of the evidence, the Board dismisses all of Ms. Murphy's complaints against Cst. Edwards for breach of the Police Code of Conduct.

Allegations against Cst. William Penfound

[70] Ms. Murphy alleges that Cst. Penfound breached section 24(1)(a) and 24(7)(b) of the Police Code of Conduct.

[71] When Cst. Penfound arrived at the scene, Cst. Edwards spoke with Mr. Smith. Ms. Murphy was at the door, hollering and yelling at the officers and Mr. Smith. Following her inside, Cst. Penfound asked Ms. Murphy what happened. Cst. Penfound concluded that she was responding in an irrational manner. This may well be -as she asserts in her submissions, because she was emotionally upset and she has a communication disorder. However, Cst. Penfound didn't know why she was not responding rationally, he was not aware of her disorder.

[72] The Board accepts that he saw no injuries on her as confirmed by other evidence.

[73] Cst. Penfound spoke with Cst. Edwards and agreed with him that from what he observed, Ms. Murphy was the dominant aggressor, and she should be arrested for domestic assault. Under the circumstances they found themselves with Ms. Murphy, they were obligated to do so under the IPV Policy.

[74] The Board did have some concern that the information relayed to Cst. Penfound by Ms. Murphy about how she kicked Mr. Smith might cause him to wonder if it was a defensive move. However, he did ask Ms. Murphy "what happened" and she said no more about that. It must be remembered, this was a chaotic situation that evening in the residence of Mr. Smith, and the Board concludes, given all the circumstances, Cst. Penfound performed his duties in a reasonable fashion.

[75] The police informed Ms. Murphy that she was going to be arrested for domestic violence assault as required by the IPV Policy. She kept on saying that she was not under arrest and was

actively resisting arrest. The Board finds that the action taken by Cst. Penfound to arrest her was not unreasonable. The Board accepts the police tactics and the force used in order to get her under control were reasonable in the circumstances.

[76] It must be remembered that in attempting to arrest Ms. Murphy, she continued to try and escape from them while thrashing her body and banging her head on the floor.

[77] For the above reasons and considering the totality of the evidence presented involving Cst. Penfound, the Board finds as a fact he did not breach either section 24(1)(a) or 24(7)(b) of the Police Code of Conduct.

Allegations against Cst. Myles Rattray

[78] Cst. Rattray is alleged to have breached section 24(1)(a) and 24(7)(b) of the Police Code of Conduct.

[79] Cst. Rattray's involvement with Ms. Murphy was limited to assisting the officers in their effort to get Ms. Murphy into the police transport vehicle. He did confirm that Ms. Murphy's behaviour included yelling and resisting arrest.

[80] The Board is satisfied that Cst. Rattray performed his duties that evening in accordance with proper police procedure. He did not use any unnecessary force on, or cruelty towards Ms. Murphy.

[81] The Board Finds on the totality of the evidence; Ms. Murphy has not proven any breach of either sections 24(1)(a) or 24(7)(b) of the Police Code of Conduct against Cst. Rattray.

Allegations against Cst. Matthew MacIsaac

[82] Ms. Murphy alleges Cst. MacIsaac breached sections 24(1)(a) and 24(7)(b) of the Police Code of Conduct.

[83] After considering the totality of the evidence, the Board concludes that Cst. MacIsaac had very little involvement with Ms. Murphy. He arrived near the end of the incident, his involvement was opening the rear door of the police transport vehicle and assisting the officers to place Ms. Murphy in the secured compartment. He then drove the police transport vehicle to the Prisoner Care Facility. He did not act in a disorderly manner. The Board is satisfied that he followed proper police procedures.

[84] Thus, based on the totality of the evidence, the Board finds Ms. Murphy has not proven any breach to the Police Code of Conduct by Cst. MacIsaac.

Allegations against Cst. Barry Warnell

[85] Ms. Murphy alleges that Cst. Warnell breached sections 24(1)(e) and 24(3)(a) of the Police Code of Conduct.

[86] Cst. Warnell became involved with Ms. Murphy the day following the arrest. He was dispatched to see Ms. Murphy, and he spoke with her because of her assertion that in her opinion, Mr. Smith should be arrested. She also wanted the two police officers who arrested her charged and fired.

[87] Cst. Warnell began his own second independent investigation of this matter. The Board finds his actions were proper and courteous towards Ms. Murphy. He even helped her get

something to eat while she was in the hospital, then spoke about the incident and took her version of events.

[88] One of the things Ms. Murphy complained about, was that he left her in the police vehicle alone. The evidence revealed that he did so because her behaviour was escalating. Cst. Warnell had requested that Ms. Murphy sign the statement he took from her. Ms. Murphy refused and wanted her handwritten note signed and authenticated first. She was very insistent on her position, and began yelling as she did not like the response she was getting from him.

[89] Ms. Murphy argued she was only trying to make certain that the exact injury was recorded in the computer and receiving justice for Mr. Smith forcibly hitting her head.

[90] As a result of a call to the police station by Ms. Murphy on January 3rd, 2023, the next day, Cst. Warnell typed up Ms. Murphy's statement and had it prepared for her to sign. They were in his police vehicle in front of the police station and she demanded he sign it or she would not.

[91] Cst. Warnell felt he could not discuss the matter with her anymore and came to the conclusion that he was getting nowhere with her.

[92] They were at the police sub-office at the time, so he left the police car with the back doors open so she could leave when she was ready. Ms. Murphy considered all of this to be discourteous or uncivil. However, Cst. Warnell went inside the building and watched her through a window. He testified she eventually just got out of the vehicle and walked away. Given the facts here, the Board finds that Cst. Warnell did nothing wrong.

[93] Cst. Warnell in his investigation took statements from Ms. Murphy and Mr. Smith. He reviewed them and the evidence from his observations and discussions with Ms. Murphy. He came to the conclusion that no grounds were present for the arrest of Mr. Smith.

[94] Under the circumstance, we do not find his actions towards Ms. Murphy were neither discreditable nor discourteous. By his actions the Board finds that Cst. Warnell performed his duties properly.

[95] Therefore, after considering the totality of the evidence, the Board finds as a fact the complaints against Cst. Warnell are not sustained, and her complaints are dismissed.

Comments

[96] Ms. Murphy also made parts of her argument that the police did not do a good investigation because they should've gotten a statement from the other person in the home, namely, Jeremy Gillard. However, the simple answer from the evidence is that they tried to get a statement from him and he refused to give one. He said he didn't want to get involved.

[97] Ms. Murphy in her post hearing brief raised the issue of racial and social dynamics. She says in the brief she is a Black/Metis woman with a diverse background. She argued that the systemic imbalance in how she was treated must be acknowledged.

[98] The Board has considered the words of Derrick, J. on behalf of the N.S. Court of Appeal in **R. V. Anderson**, 2021 NSCA 62. Although the decision dealt with a criminal sentencing matter, the Board has read with its comments on the systemic and institutional racism and injustice in Nova Scotia.

[99] Boudreau J. in *Borden* (supra) said at paragraph 59;

“...the Supreme Court in *Le* (supra), that racial profiling can affect either or both “subject selection” or “subject treatment”; in other words, even if the *selection* of a suspect by police is not racially motivated, that suspect’s *treatment* by police can be. In other words, she submits that even if the police were unaware of her race when they first approached her, their decision to detain/arrest/handcuff her, was motivated by racial bias.”

Considering the above, the Board finds that other than her general comments, Ms. Murphy has not pointed to any evidence which would show any racism by the officers. She wanted the Board to infer there was racism.

[100] Ms. Murphy also argues in her brief that the conduct of the officers “raises serious concerns under section 7 of the Canadian Charter of Rights and Freedoms, which protect the right to security of the person and procedural fairness.”

[101] She argues that the police subpoenaed her doctor, but “they made no comparable effort to subpoena Jeremy.” The Doctor in question, Dr. Lydia Melanson was called to address a letter tendered to the Board. In her evidence, she clarified her letter, and one could say she backtracked from her statement in her letter.

[102] Even if there was a Charter breach, the Board finds that it would be insufficient enough to be a breach of the Police Code of Conduct.

[103] The Board finds as a fact that the officers in this matter were neither “subject selection” nor “subject treatment”.

[104] The Board finds as a fact that racism did not form any part of the police officers decisions.

[105] Based on it's findings herein and considering the totality of evidence the Board finds as a fact there was no breach of any of the sections of the Charter by the officers, and the complaint against all officers in this matter is dismissed.

Signed in Halifax, Nova Scotia, this 27th day of October 2025.

ORIGINAL SIGNED

Hon. Simon MacDonald

ORIGINAL SIGNED

Peter Mancini KC

ORIGINAL SIGNED

Lisa Emery