

DECISION

File No. PC-24-0043

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 **Tracy Wells-Giasson**,
Complainant against **Cst. Nael Orabi** of **Halifax
Regional Police**, requesting a review of a decision
made by Inspector Ron Legere dated July 22nd,
2024.

BEFORE:

Jean McKenna, Chair
John Withrow, Board Member
Darlene Bowie, Board Member

COUNSEL:

Tracy Wells-Giasson, Self-Represented
Brian Bailey, Counsel for Cst. Nael Orabi
Andrew Gough, Counsel for Halifax Regional
Police

HEARING DATE:

April 4th, 2025

DECISION DATE:

July 7th, 2025

[1] This is the complaint of Tracy Wells-Giasson against Cst. Nael Orabi of the Halifax Regional Police (HRP). The Form 5 Public Complaint was filed on April 4th, 2024, arising out of an incident that took place on February 12th, 2024.

[2] At around 7:30 AM on that date, Ms. Wells-Giasson received a phone call from Cst. Orabi. Ms. Wells-Giasson was on her way to work at 40 Alderney Drive. A co-worker, Natasha Power, was a passenger. Cst. Orabi advised her that he had to meet with her, concerning the involvement of her vehicle in incidents of January 14th, 2024, in the early morning hours. The actions of the driver and the fact that it 'sped away' from police, (again, Cst. Orabi), led him to believe that the (male) driver was impaired.

[3] She told him that her son would have had her car at that time, and that she wanted to speak to him before speaking to Cst. Orabi. He told her that he had to serve her with a Notice to Produce Driver, in relation to the events. He was insistent that it had to be done promptly.

[4] She called her son, and spoke to Cst. Orabi again afterwards.

[5] Ms. Wells-Giasson did not want to meet him at her workplace, and they eventually agreed that he would meet her outside of the building, which took place. She was very upset and was loud in speaking to him; she says that he was very confrontational in his dealing with her. She told him again that her son had her car on the night in question, but she was unable to say who was driving. She also said that she believed that he had been downtown, and she says that from this, Cst. Orabi inferred to her that he must have been drinking that night.

[6] Notwithstanding the fact that she had already told him that her son had the car that night, Cst. Orabi was insistent that he serve her with the Notice. However, he did not have the correct document with him and had initially created the incorrect document. Two other officers came to the scene and provided the proper document, which was then provided to Ms. Wells-Giasson.

[7] She apparently had a phone conversation with Cst. Orabi on February 20th, 2024, when she again told him that her son had the car on the night in question. He then contacted her son. She had no further interaction with Cst. Orabi.

[8] Her complaint also references Cst. Orabi's later interaction with her son, however, her son did not file a complaint, nor did he endorse the Form 5, consenting to the third-party complaint. Accordingly, the Board can only deal with the specific actions in relation to Ms. Wells-Giasson.

[9] In the appendix to the Form 5, she states:

“I believe the officer handled the situation poorly, displaying rudeness and uncooperativeness, resulting in unjust treatment towards my son and me. The lack of thorough investigation and failure to consider all information led to unnecessary stress and legal consequence.”

(Her son was eventually served with a Summary Offence Ticket for Failing to Produce Driver, contrary to s. 258(1) of the *Motor Vehicle Act*).

[10] As is the usual accepted practice, the HRP investigator characterized the complaint in terms of the *Police Act* Regulations code of conduct:

- (a) acting in a disorderly manner or in a manner that is reasonably likely to bring discredit on the reputation of the police department;
 - (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;
- (7) A member who abuses their authority in any of the following ways commits a disciplinary default:
- (c) unlawfully exercising authority as a member.

[11] The relevant section of the *Motor Vehicle Act* is as follows:

Identifying person in charge of vehicle

258 (1) When a motor vehicle is operated in violation of any of the provisions of this Act or of the regulations made under this Act, the registered owner of the vehicle on the request of the Registrar or of any peace officer shall, within forty-eight hours of the request, supply the Registrar or the peace officer with the name and address of the person in charge of the vehicle at the time of such violation.

(2) A registered owner, who refuses, fails, neglects or is unable to supply the name and address of the person in charge of the vehicle within forty-eight hours after being so requested, shall be liable on summary conviction to the penalty prescribed for the offence of the driver.

(3) Where under this Section the registered owner of a motor vehicle, at the request of the Registrar or a peace officer, supplies the name of a person who had the motor vehicle with the consent of the owner, that person on the request of the Registrar or of any peace officer shall, within forty-eight hours of the request, supply the Registrar or the peace officer with the name and address of the person in charge of the vehicle at the time of the violation.

(4) A person who is requested pursuant to subsection (3) to supply the name and address of the person in charge of a vehicle and who refuses, fails, neglects or is unable to supply the name and address of the person in charge of the vehicle within forty-eight hours after being so requested is liable on summary conviction to the penalty prescribed for the offence of the driver.

The **Act** also provides the following definition of “driver”:

- (1) “driver” means a person driving **or in charge of a vehicle** and includes the operator of a motor vehicle;

[12] The “Notice to produce Driver, utilized by Cst. Orabi in this case specifically references “driver.” There is no form created by regulation, and it appears that the particular form (Page 58, Exhibit 1) was created by HRP. (Doc number HRP 028, Rev. Dec. 99)

[13] It is notable that s. 258 uses the term “person in charge of the vehicle”, and only in s. 258(4) is the “driver” mentioned. Which then seems to impose absolute liability for the offence committed by the 'driver' on 'the person in charge'. This clearly recognizes at least the interpretation that the 'driver' can well be someone other than 'the person in charge' and actually seems to create a route for the Registrar, or an officer, to track down the offender. (as an aside, it seems rather bizarre that the individual who becomes the ultimate source of the information requested, but was unable to identify the driver, could wear the penalty which would be imposed on the driver, when it could well be that the alleged offence could well fall into the Criminal Code)

[14] In this case, there is not a great deal of dispute over the facts involving the interaction between Tracy Wells-Giasson and Cst. Nael Orabi other than tone. Ms. Wells-Giasson does not

dispute the fact that she was loud and angry, at least in her initial telephone discussion with Cst. Orabi. She was naturally upset, and became further upset when Cst. Orabi implied that her son had been in an impaired driving incident. (The audio of the dispatch record from January confirms that he knew the driver was a male from his own observation, he reasonably believed that the driver was probably impaired, that Tracy Wells-Giasson was the owner, and that he suspected that her son, Tristan, was probably the driver)

[15] The officer's notes from February 12th, 2024, with "LE – late entry endorsed", note that she apologized for being loud. On behalf of Cst. Orabi, Counsel Brian Bailey argues that as she did not mention the apology in her direct or cross-examination, that impacts her credibility. However, she freely admitted in her testimony that she was loud, and the apology (if relevant at all) was never put to her in cross-examination, and as such could not impact her credibility.

[16] Cst. Orabi says that she changed her story about who was driving and seems to see it that she first said her son was **driving**, and then said that anyone could have been driving. It is argued that she changed her story and was trying to protect her son. This seems to flow from the officer's interpretation of 'driver' vs 'person in charge', which is understandable, given the form he was to use and the language of the statute.

[17] He did not recognize that initially, and throughout, maintaining that her son had the car that night, did not mean (at least to her) that he was driving. She could not then, or ever say who was driving. She could neither exonerate him, or blame him. She could not be seen as 'changing her story'.

[18] Cst. Orabi testified that he offered to meet later in the day, perhaps during her lunch break, and in his testimony, he agreed that he was 'insistent' that it be done that day. Ms. Wells-Giasson does not recall the lunch meeting suggestion, but in any event, they ultimately agreed to meet at the front entrance to the building, once she had checked in for work. It was clear that from the outset, Cst. Orabi felt that he needed (urgently) to get the Notice served, despite the fact that she had already complied with the request that she identify the person who had her car that night. He also already had the contact information for her son, either as provided by her, or from his investigation on the night of the driving incident.

[19] In his testimony, Cst. Orabi attempted to explain the urgency; he said that after the initial incident, he had an injury, and then was on leave, and it was particularly important that the file be dealt with. The Versadex discloses that on January 22nd, 2024, he requested an extension until February 3rd, 2024, as he was on leave. Sgt. Joanne Sweeney extended the diary date on the file until "after leave". On February 7th, 2024, he requested, and was given, a further extension, as he had two busy day shifts, and a first night shift with higher priority files.

[20] It appears that he was under pressure to complete the file, and he did so; Tristan Wells-Giasson was eventually issued a Summary Offence Ticket pursuant to s. 258(4) of the *Motor Vehicle Act*, and the matter was dealt with by a court. It is argued on behalf of Cst. Orabi that Ms. Wells-Giasson was misleading about the court proceedings, as she testified that Cst. Orabi failed to appear, and the charge was dismissed. That is not completely correct; on the first appearance, her son did not attend, and a conviction was entered. He then had the conviction set aside, and a new date was set. On the next date, Cst. Orabi did not appear, but was on a course at the time,

and had so advised the court. It seems apparent that neither Ms. Wells-Giasson nor her son were made aware of Cst. Orabi's reason for unavailability. This omission by her does not impact her credibility.

[21] The Board has considered all of the evidence in relation to the interactions between the complainant and the officer. The versions differ only slightly; Ms. Wells-Giasson does not recall Cst. Orabi's offer to meet on her lunch hour; that does not mean that he did not make that suggestion. Indeed, it seems logical that he would make such a suggestion. On her part, Ms. Wells-Giasson was admittedly very upset when she received a call from a police officer, and she remained upset throughout their contact, such that she took the rest of the day out of the office.

[22] We do not accept that she changed her story to Cst. Orabi, to protect her son. The confusion in interpretation over the person 'in charge of the vehicle', and 'driver', is completely understandable. Cst. Orabi had never dealt with this section before, nor had she. The legislation, while somewhat confusing, is an attempt to provide a road map to determine who was driving at a particular time. "In charge of", can easily be interpreted as the "driver", or the person who has the car. The definition section includes both descriptions in a single subsection, as "driver" including both.

[23] Ms. Wells-Giasson's circumstance could be included in 258(1), although at the time of Cst. Orabi's wish to serve her with Notice, she had already told him that her son was the person in charge. There would be no need to serve her with Notice, other than perhaps make it clear to a SOT court at a future date that all steps had been taken.

[24] The HRP Notice document seems to reflect the intention of the process, and would understandably lead Cst. Orabi that he should obtain the name of the driver from Ms. Wells-Giasson

[25] Ms. Wells-Giasson's circumstances would actually bring her within s. 258(3), as a registered owner who had provided the name of the person who "had" the motor vehicle.

[26] The Board finds no abuse of authority or contravention of an enactment by Cst. Orabi.

[27] In terms of conduct that could be considered "discourteous, disorderly, or uncivil", we accept the evidence of both parties on that issue, even where the testimony differs in minor areas. Ms. Wells-Giasson saw Cst. Orabi as very direct and forceful, and not treating her in a manner that an innocent, cooperative citizen would expect. He saw her as upset, loud, and less than honest about who was driving the car that night. She admits to being loud. He was tasked by his Sergeant for completing that long overdue task, and as a relatively junior constable, was certainly under pressure. He was also dealing with a rather confusing piece of a statute. He believes that he was polite and straightforward.

[28] We accept that both parties were honest in their recollection of the events, but that each version is colored by the perception of the witness at the time. Cst. Orabi was under pressure to complete his task; Ms. Wells-Giasson was understandably very upset by the suggestion that her son was in trouble.

[29] As the Board has noted previously, the approach of different officers varies, according to the circumstances and the particular personality of the officer. (**Wolf v. Roberge**, 2024, NSPRB 22-0124) Some will take a more relaxed and gentle approach, some will be direct and demanding. But the more direct approach does not necessarily cross the line into disciplinary default, without more. In this case, while recognizing how the events were very upsetting for the complainant, we find that Cst. Orabi 's conduct did not cross the line.

[30] The complaint is dismissed.

Dated in Halifax, Nova Scotia, this 7th day of July, 2025.

ORIGINAL SIGNED

Jean McKenna, Chair
Nova Scotia Police Review Board

ORIGINAL SIGNED

John Withrow, Member
Nova Scotia Police Review Board

ORIGINAL SIGNED

Darlene Bowie, Member
Nova Scotia Police Review Board