

**DECISION**

File No. PC-24-0091

**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 **Thomas Everett**, Complainant  
against **Cst. Anthony Stewart** of the **Amherst  
Police Department**, requesting a review of a  
decision made by Chief Dwayne Pike dated  
December 5<sup>th</sup>, 2024.

**BEFORE:**

Jean McKenna, Chair  
Hon. Simon J. MacDonald, Vice-Chair  
Ibrahim Elayyat, Board Member

**COUNSEL:**

Thomas Everett, Self-Represented  
James Giacomantonio, Counsel for Cst. Anthony  
Stewart  
Aaron Connolly, Counsel for Amherst Police  
Department

**HEARING DATE:**

June 24<sup>th</sup>, 2025

**DECISION DATE:**

October 30<sup>th</sup>, 2025

[1] Constable Anthony Stewart is a member of the Amherst Police Department (APD). He attended the Atlantic Police Academy, following which he served with the Kensington Police Department in Prince Edward Island in August 2021, until he joined the APD on July 11<sup>th</sup>, 2023.

[2] The complainant, Thomas Everett, at the time of the incident lived at 25 Mission Street, Amherst. On July 10<sup>th</sup>, 2024, he filed a complaint with the Amherst Police Department alleging misconduct by Cst. Stewart.

### **Facts**

[3] On July 23<sup>rd</sup>, 2023, a year before the encounter with Cst. Stewart that is the subject of this complaint, Thomas Everett had generated a Facebook post, purporting to prohibit trespassing on 25 Mission Street:

#### **No Trespassing**

“Pursuant to the *Canadian Bill of Rights* section 1, 2(a) and the *Criminal Code of Canada* section 34 this is to all peace officers and other officials, including: Police Officers, Municipal bylaw officers, Public health officers and AGCO officers...”.

The ‘Notice’ concludes;

“Since my Facebook is being monitored APD and RCMP are being put on notice. You are not welcome on the property I reside at.”

[4] Mr. Everett had circulated the post to some members of the APD, and on July 28<sup>th</sup>, 2023, a member had emailed a copy to some other members, with the comment “FYI if you deal with Tommy Everett... been posting stuff on his Facebook.. not a fan of Police” Cst. Stewart testified that he had never seen the post.

[5] There was no evidence that the “No Trespassing” notice was present or visible on the Mission Street property.

[6] On July 4<sup>th</sup>, 2024, Cst. Stewart was dispatched to respond to a complaint from a member of the public, that someone at 25 Mission Street was burning on their front lawn. There was a burn ban order in place in Cumberland County at the time, supported by a municipal bylaw dated June 26<sup>th</sup>, 2023, and the caller believed the fire was in violation of the ban order. The dispatcher described it as a bonfire.

[7] Cst. Stewart proceeded to the Mission Street address, where he could see a small gathering of individuals socializing around a front yard fire. From what he was able to see, he believed it was possibly a propane “fire pit”.

[8] When he responded to dispatch, he was not aware that propane fires were an exception to the ban and were permitted.

[9] He pulled into the driveway, approximately one car length, with his window open; his intention was to inform the occupants of the burn ban and request they extinguish the fire. He was not intending to issue a ticket. One individual (Thomas Everett) immediately approached his vehicle, shouting to him to “get the fuck off my property”, and that he was trespassing. Cst. Stewart told him that there was a burn ban in effect, and Mr. Everett told him it was a propane fire, which he said was permitted.

[10] Rather than challenge this angry and unexpected greeting, Cst. Stewart chose to de-escalate and immediately backed out and parked on the opposite side of the street, with his window closed. Cst. Stewart had been in the Everett driveway for approximately 10-15 seconds.

[11] Due to the initial hostile response, of not only Thomas Everett but also others who had been socializing around the fire, Cst. Stewart then contacted dispatch and asked for assistance.

The dispatch record in evidence shows the following:

“Ah, Kevin or Randy, you guys wanna swing over here for a sec, these guys are given (sic) me a hard time. It's a propane fire I guess, not a wood fire so they are freaking right out telling me to get off their property and want to speak to a supervisor.”

[12] Cst. Stewart also called the Department of Natural Resources to determine whether propane fires were permitted. After a series of “press one, press two” responses, Cst. Stewart was able to confirm that propane fires were permitted.

[13] While Cst. Stewart was on the phone, Thomas Everett approached his vehicle, demanding his name and badge number. Cst. Stewart's window was closed, and he put up a finger to wait, as he was on the phone. At the same time, another individual from the group around the fire came into the street, taunting, swearing and behaving in a hostile manner. This interaction was being recorded, and apparently streamed, by one of the group, to some Facebook page.

[14] The comments made while Cst. Stewart was sitting in his vehicle included:

- “What the fuck he's doing”
- “I want his badge”
- “Complete harassment”
- “Trying to come in and intimidate us...that’s just them”

[15] In the meantime, in response to Cst. Stewart's call for assistance, Cpl. Babineau arrived on the scene, while Cst. Stewart was still on the phone. He parked on the same side of the street as the fire and got out of his vehicle. From his location, he was able to see that this was in fact a propane fire. He knew that it was legal, because he did a fair amount of camping, and had his own propane fire pit. He then spoke to the group and advised that “it was ok” as it was a propane fire. He and Cst. Stewart then left the scene.

[16] The entirety of the encounter was recorded in a video provided by Mr. Everett, from his security camera, and on a cell phone.

### **Analysis**

[17] In his complaint, Mr. Everett characterizes the impugned conduct as “...another attempt at harassing my family and I.”

[18] The complaint is characterized under the Code of Conduct as follows:

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

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

[19] In his submissions, Mr. Everett characterizes Cst. Stewart's entry into the driveway (while remaining in his vehicle) as unlawful, particularly as Cst. Stewart “unequivocally conceded” that he could have conducted his investigation from the roadside.

[20] He further argues that the fire risk was minimal to non-existent, as the burn ban was generated in response to the massive destructive fires that occurred in 2023. He points out that

the massive fire had occurred a year prior to his front yard, propane, fire. This, he argues, aggravates Cst. Stewart's 10-15 second "trespass" on his driveway.

[21] He also challenges Cst. Stewart's credibility:

"Stewart's credibility is fatally undermined by his admitted mis-statements during cross-examination: describing me as having "red hair" despite my baldness, falsely stating I held a phone, and using my alias "Tommy" despite knowing my legal name, Thomas, from Sgt. Graham. These errors reveal a pattern of carelessness or deliberate misrepresentation, eroding his testimony's reliability and reinforcing the unjustified nature of his actions. This evidence, coupled with Stewart's admission of a roadside alternative and the absence of any wildfire threat in 2024, establishes an indisputable case of unauthorized entry and discreditable conduct"

[22] With respect, credibility of Cst. Stewart, or indeed any of the other witnesses in this case, is of limited relevance. The entirety of events was demonstrated in the video, including audio entered into evidence. Whether or not Cst. Stewart later did not correctly recall the colour of Mr. Everett's hair, or who was holding a cell phone, is irrelevant. This was a very minor event, that was over very quickly.

[23] The burn ban may have been put in place the year before, but it was still in place. The neighbor that complained in the first place was aware of it. Cst. Stewart was aware of it, although not aware of the propane exemption. And by his own evidence, Mr. Everett was both aware of it, and knew that propane fire pits were an exception to the ban.

[24] Furthermore, whether or not Cst. Stewart could have conducted his investigation of the citizen complaint from a vehicle parked at the curb is not in dispute. There is no question that he could have parked at the curb and spoken to Mr. Everett through his window. This, particularly since his intention was not to issue a ticket, but rather to point out the burn ban, and ask the occupant to extinguish the fire. The relevant question is, "should he have?", Did entering the

driveway, for a few seconds, but remaining in his vehicle, to have the discussion constitute “discreditable conduct”? Did the “No trespassing” notice have any impact on Cst. Stewart’s approach to the situation?

[25] In *Legal Aspects of Policing*, (Paul Ceyssens, *Legal Aspects of Policing*; (SaltSpring Island: Earls court Press) at s. 6.2(b) (p. 6-17) the analytical framework for the Board in an allegation of discreditable conduct is articulated:

- The test is primarily an objective one.
- The Board must measure the conduct of the officer by the reasonable expectation of the community.
- In determining the reasonable expectations of the community, the Board may use its own judgment, in the absence of evidence as to what 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 in this case.
- 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.
- Because of the objective nature of the test, the subjective element 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.

[26] The Board, in applying the *Ceyssens* framework concludes that the “reasonable expectations of the community” do not favor Mr. Everett’s position.

[27] Cst. Stewart had been dispatched to the property to deal with a call from a neighbor, who believed an illegal bonfire was taking place in the Everett front yard. As a member of the community, the neighbor’s expectation was that the APD would send an officer to deal with it, As a member of the APD, Cst. Stewart had a duty to attend, investigate, and respond. That is what he did.

[28] His authority, and duty to respond is referenced in the bylaw (Exhibit 1):

“Anyone who is directed by the Town of Amherst to enforce this bylaw shall have control over the prevention and suppression of fires governed by this bylaw; and may enter upon any land, at any reasonably necessary time, for the purpose of performing their duties and functions pursuant to this Bylaw”.

What he did was well within his authority, and as well, his duty. Briefly pulling into the driveway was a reasonable choice to make. Almost immediately backing out onto the street to de-escalate, rather than engage in a confrontational approach is commendable. Remaining at the scene until the task was completed was part of his duty. He also investigated the extent of the burn ban, by going directly to the most reliable source.

[29] Asking for the presence of another officer was also reasonable, as he was a single individual confronted by 3 or 4 individuals, cursing and taunting.

[30] Mr. Giacomantonio, on behalf of Cst. Stewart argues that the “No Trespassing” notice posted on Facebook almost a full year prior to the encounter and not even known to Cst. Stewart, is a red herring. He refers to the *Waterfield* test, as considered in *R v. Kelsy*, 2011 ONCA 605:

“Despite the many statutory investigatory powers that Parliament has provided since the enactment of the *Charter*, it is well-established that the courts will continue to recognize the exercise of police powers that comply with the common law *Waterfield* test: see *R. v. Kang-Brown*, [2008] 1 S.C.R. 456 per Binnie J. at paras. 49-51. Where, as here, the police conduct constitutes a *prima facie* interference with a person's property, the court will consider two questions:

- (1) Does the conduct fall within the general scope of any duty imposed by statute or recognized at common law?
- (2) Does the conduct involve a justifiable use of powers associated with the duty?

*Waterfield* is the common law authority that allows police to act outside the strict statutory limits or powers when acting reasonably. As long as police are acting broadly within the scope of ‘any duty imposed by statute or recognized at common law’ and the conduct is a ‘justifiable’ use of the powers associated with the duty, the police actions are deemed to be lawful. *Waterfield* is a critical analytic tool that describes the reality that



police are saddled with a broad and complex duty to uphold the law. The myriad and unpredictable ways in which police are required to do their job is impossible to narrowly define. Police do their jobs and understand that they are required to follow the lawful boundaries between the state and individual rights. Citizens are also required to allow police to operate – presuming they are acting in good faith and often in exigent circumstances.”

[31] Mr. Everett argues that the *Waterfield* powers require 1) a recognized duty, and 2) necessary and proportionate action. He states in his post hearing submission “Stewart's admission of a non-trespassing alternative defeats necessity and proportionality”. With respect, his distinction between pulling into the driveway (for 10-15 seconds) or parking on the street is a non-distinction, not assisted by his colouring Cst. Stewart's agreement that such an action would certainly have been an alternative.

[32] Mr. Everett argues that the decision of the Supreme Court of Canada in *R. v Le*, 2019 SCC 34, supports his contention that the act of Cst. Stewart in stopping his vehicle in the driveway, constituted trespass. He says that in the circumstances, and that any “implied license to approach” was revoked, by his (Everett's) objection.

[33] That is a misunderstanding of *Le*, which was an arbitrary detention (Charter, s. 9) decision. In Mr. Everett's case, this encounter cannot in any way be considered “detention”. As noted in *Le*,

“Having said that, not every police-citizen interaction is a detention within the meaning of s. 9 of the *Charter*. A detention requires “significant physical or psychological restraint” (*R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59, at para. 19; *Grant*, at para. 26; *R. v. Suberu*, 2009 SCC 33, [2009] 2 S.C.R. 460, at para. 3). Even where a person under investigation for criminal activity is questioned, that person is not necessarily detained (*R. v. MacMillan*, 2013 ONCA 109, 114 O.R. (3d) 506, at para. 36; *Suberu*, at para. 23; *Mann*, at para. 19). While “[m]any [police-citizen encounters] are relatively innocuous, . . . involving nothing more than passing conversation[,] [s]uch exchanges [may] become more invasive . . . when consent and conversation are replaced by coercion and interrogation” (Penney et al., at pp. 84-85). In determining when this line is crossed (i.e. the point of detention, for the purposes of ss. 9

and 10 of the *Charter*), it is essential to consider all of the circumstances of the police encounter. Section 9 requires an assessment of the encounter as a whole and not a frame-by-frame dissection as the encounter unfolds”.

[34] All other questions aside, there was absolutely nothing in Cst. Stewart's actions that could reasonably be construed as “detention”.

[35] While an implied consent to enter premises can be revoked by an occupant's objection, in this case, the moment Mr. Everett told Cst. Stewart to “get the fuck off my property”, Cst. Stewart did so to de-escalate, and was not assuming implied consent. He was lawfully (and reasonably) pulling into the driveway pursuant to his duty.

[36] Mr. Everett further relies on the decision of the Saskatchewan Court of Appeal in **R v. Singer**, 2023 SKCA 123 for the principle that (as Mr. Everett himself puts it) “...police cannot enter private driveways **without legal authority** absent exigent circumstances or consent.”. Of course, in this case, Cst. Stewart had legal authority, by virtue of the bylaw, and the *Waterfield* test.

[37] The simple facts in this case are:

- Mr. Everett and his friends were sitting in a front yard, open to public view and steps away from the street, having a fire.
- There was a burn ban in place at the time, but unknown to Cst. Stewart, propane fire was permitted.
- Cst. Stewart was dispatched to the scene in response to a public complaint.
- He pulled into the driveway, for the purpose of simply advising the occupant that it was in breach of the fire ban and asking the occupant to extinguish the fire.
- He was met by an immediate and belligerent response from Mr. Everett, advising that he was trespassing, and so immediately backed out onto the street.

- That was the full extent of the contact and communication between Mr. Everett and Cst. Stewart, other than the hand gesture by the constable, from behind his closed, vehicle window, to 'wait a sec', as he was obviously on the phone.
- Other than his immediate and startling comment to Cst. Stewart to “get the fuck off my property” (which he excuses by claiming that is “just the way I talk”), Mr. Everett himself was reasonably courteous, despite taunting, belligerent comments from some of his friends.

[38] The result of all of this was a calm, non-confrontational response by Cst. Stewart who did not react in any way to the behavior of Mr. Everett or his friends.

[39] Mr. Everett goes so far as to refer to “...my guests recorded intimidations”. The recorded video and audio of this encounter belie any such suggestion, and it appears more of an attempt to intimidate or provoke Cst. Stewart.

[40] Mr. Everett's legal arguments rely on decisions that involve primarily criminal cases, that deal with charter rights, that, while interesting, are legally and factually distinguishable from the very simple circumstances that existed at 55 Mission Street on July 4<sup>th</sup>, 2024.

[41] Even if the 10–15 second entry on the driveway was a Charter breach (and we find that it was not), the conduct does not begin to approach a Police Code of Conduct violation.

Furthermore, Cst. Stewart had the duty and authority to do so arising out of the by-law, and the *Waterfield* test, and the “No Trespassing” notice could not bar his entry.

[42] There was nothing in Cst. Stewart's conduct that could possibly be characterized as “acting in a disorderly manner or in a manner that is reasonably likely to bring discredit on the reputation of the police department”.

[43] To suggest that somehow public trust would be undermined by this “police overreach” (as Mr. Everett describes it) is very much an over-reach itself. To the contrary. If anything, public trust would be enhanced by the way this matter was dealt with by Cst. Stewart.

[44] The complaint is dismissed.

Dated in Halifax, Nova Scotia, this 30<sup>th</sup> day of October 2025.

ORIGINAL SIGNED

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Jean McKenna, Chair

ORIGINAL SIGNED

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Hon. Simon MacDonald, Vice-Chair

ORIGINAL SIGNED

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Ibrahim Elayyat, Member