

**DECISION**

File No. PC-23-0091

**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 **Jolanta Piorko**, Complainant, against **Cst. Timothy Lawlor**, of the **Halifax Regional Police**, is requesting a review of a decision made by Inspector Ron Legere dated **September 28<sup>th</sup>, 2023**.

**BEFORE:** Jean McKenna, Chair  
Hon. Simon MacDonald, Vice-Chair  
Siobhan Doyle, Board Member

**COUNSEL:** Brian Bailey, Counsel for Cst. Timothy Lawlor  
Andrew Gough, Counsel for Halifax Regional Police  
Jolanta Piorko, Self-Represented

**HEARING DATES:** October 3<sup>rd</sup>, 2024

**DECISION DATE:** November 5<sup>th</sup>, 2024

[1] This is the complaint of Jolanta Piorko against Cst. Timothy Lawlor of the Halifax Regional Police (HRP) regarding an incident that took place on December 30<sup>th</sup>, 2021. The hearing took place on October 3<sup>rd</sup>, 2024. The Board gave an oral decision on that date, dismissing the complaint. The written reasons and conclusions follow.

[2] None of the facts surrounding the complaint are in dispute, and in fact, most of the events leading up to the act complained of are captured in a video created by Ms. Piorko's husband. The video was presented at the hearing. Ms. Piorko emphasized clearly and honestly, that her complaint centered on one issue: the wording of a Summary Offence Ticket, prepared by Cst. Lawlor. Aside from that, she had no concerns about the various officers involved.

[3] On the day in question, Ms. Piorko went to the skating oval on the Halifax Commons. The province of Nova Scotia, all of Canada, and most of the world, had been under significant restrictions on interaction with others. The restrictions had been imposed by the various health authorities, in the face of a deadly epidemic of "COVID-19". Shortly before the incident in question, those restrictions had been partially lifted in Nova Scotia, in response to earlier measures, including the development of a vaccine. The public had been given fewer limiting conditions on their activities, particularly, those of outdoors. One of the conditions was that citizens were required to provide proof of vaccination in order to participate in such activities.

[4] The penalty for non-compliance was imposed pursuant to s. 71(1) (b) of the *Health*

*Protection Act, SNS 2004, c. 4 (as amended):*

#### Offences and Penalties

71 (1) Every person who fails to comply with this Part or the regulations or with an order made pursuant to this Part or the regulations is guilty of an offence and is liable on summary conviction to (a) in the case of a corporation, a fine not exceeding ten thousand dollars; or (b) in the case of an individual, a fine not exceeding two thousand dollars or to imprisonment for a term of not more than six months, or both.

[5] Ms. Piorko is what is generally described as an “anti-vaxxer”. She had made the choice not to be vaccinated, and of course, did not have proof of vaccination. In attending the oval, it was the admitted intention of Ms. Piorko to defy the regulations. To do so, she attended the oval with her husband; it was his role to remain outside of the oval compound and video record her activity.

[6] After many months of very restricted interpersonal activity, people were eager to take part in any permissible activity. A number of citizens, children and adults, (estimated by witnesses to be in the vicinity of 200) went to the oval that day, and waited in line at the entrance to the compound, where proof of vaccine was checked by security staff prior to entry. Once admitted, they would proceed to a seating area, where they would don their skates. The actual entry gate to the ice had not yet been opened, but that was expected to happen shortly.

[7] The video recording shows people putting on skates, walking around with skates on, all masked, and ready to skate. To carry out her “protest” Ms. Piorko somehow skipped the line up, and entered the compound, where she sat down and put on her skates. She then stood and walked around within the compound. She was quickly approached by security staff, who are

seen on the video speaking to her and moving in such a way to prevent her access to the (still closed) entrance to the ice surface. She would periodically hold up a tiny Canadian flag, which she appears to perceive as demonstrating that the COVID restrictions were somehow violating her rights as a Canadian citizen.

[8] She was masked, but only partially; the mask covered her mouth but not her nose.

[9] She testified that security staff were asking her for proof of vaccination and advising her that she had to leave if she could not produce it. She of course did not, and could not, produce it. Security staff moved continuously to block her access to the gate to the ice surface. She refused to leave. She was advised that police would be called in order to remove her. She still would not leave.

[10] The verbal confrontation with security continued for some considerable time, during which skaters were not permitted to enter the ice service.

[11] Security eventually made the call to HRP, and after approximately 15 minutes, Cst. Ben Rodgers and Cst. Jonathan Germain arrived. They spoke to security staff, and in order to de-escalate, directed them to open the gate to the ice, so that members of the public could access the ice. This was done and they continued to deal with Ms. Piorko.

[12] She initially refused to leave, but when Cst. Germain advised her that she would be arrested (for obstruction of justice) if she did not leave, this was apparently sufficient to convince her that she should leave. She removed her skates and proceeded (accompanied by the officers) to exit the compound. She was told by Cst. Germain that she would be issued a Summary Offence Ticket pursuant to the *Health Act*, and as well, a Protection of Property Act Notice, which would prohibit her return to the premises.

[13] HRP vehicles are equipped with a computerized ticketing system, which includes a printer. The printer in the vehicle assigned to Cst. Rodgers and Cst. Germain that day was not functioning, and so it was necessary for them to have Cst. Timothy Lawlor attend with his equipped vehicle to produce the particular ticket. The initial ticket was generated by Cst. Lawlor.

[14] In preparing the ticket, he spoke to Cst. Germain, and reviewed the call history. He was left with the impression that she had been skating. The ticket reads as follows:

PERSON FAILING TO COMPLY WITH PART I OF ACT OR REGULATIONS OR WITH ORDER MADE UNDER PART I OF THE ACT (ENTERED AREA WITHOUT PROOF OF VACCINE, WOULD NOT LEAVE PREMISES AFTER BEING ASKED TO LEAVE).

The notes included on the ticket added:

“Jolanta attended the oval rink at 5775 Cogswell Street, Halifax, she was asked by security to provide proof of vaccination, she declined to provide proof of vaccination and continued to skate on the rink holding up other skaters.”

[15] Cst. Lawlor then entered further information on an Initial Officers Report. That document included the following:

“Piorko put on her skates after being asked to leave, then started skating around the oval, holding up other people trying to get on the ice to enjoy the oval. Piorko then came off the ice and was declining to leave, she was then advised by Cst. Rodgers and Cst. Germain she would be arrested at which time she decided to leave...”

[16] The dispatch record is the first reference to Ms. Piorko “skating”; “16:09...Female skating around the oval. Not vaccinated...refusing to leave.” There is no question that Ms. Piorko did not skate; what she did was enter the premises without providing Proof of Vaccine (POV).

[17] Ms. Piorko initially refused to provide identification information to Cst. Lawlor, however, eventually relented, and the ticket was completed. She refused to accept the ticket.

[18] The ticket proceeded to Summary Offence Court on March 9<sup>th</sup>, 2023. The prosecutor dropped the charges. There is no evidence as to why that happened. Ms. Piorko filed her Form 5 complaint on May 22<sup>nd</sup>, 2023. She stated in her complaint that her complaint “...could not have been submitted prior to the matter being resolved in court”. There was no evidence as to why her complaint was processed out of time. However, the question of Board jurisdiction to hear the matter was not raised. The matter was forwarded to the Board upon review by the Commissioner, and as such, the Board has a duty to hear the matter.

[19] In her Form 5 complaint, she says that Cst. Lawlor “...presented false statements in the ticket issued to me...” She concludes “I would like to understand how officer T. Lawlor has been reprimanded for lying in the documents provided to the Court as evidence against me.”

[20] The HRP Disciplinary Authority categorized the complaint as falling within 24(4)(a):

“Willfully or negligently making or signing a false, misleading, or inaccurate statement or entry, including by electronic means, in an official document or record.”

That captures Ms. Piorko’s sole issue.

### **Was the error by Cst. Lawlor a disciplinary default?**

[21] One of the leading judicial decisions concerning failure of police officers to improperly and diligently discharge their duty is in **P.G. v. Police Complaints Commr.** (1996), 90 O.A.C. 103 (DC), where the divisional court in Ontario held that either of two situations is required in order to establish neglect of duty;

- 1) There must be some element of willfulness on the part of the police officers neglect, or:
- 2) There was degree of neglect which would make the matter cross the line of a mere performance consideration to a matter of misconduct.

In the circumstances of the Piorko complaint, there was clearly no “willfulness” on Cst.

Lawlor's part, in erroneously describing her conduct as “skating”. That wording was based on the information that he had: the interpretation of the dispatch note taker in response to the call from security; information relayed by security and / or bystanders to Cst. Rodgers and Cst. Germain, and information provided to Cst. Lawlor by Cst. Rodgers and Cst. Germain.

[22] We have no evidence as to whether Ms. Piorko told Cst. Lawlor that she was not skating, or whether she realized that was the description in the ticket until later, as she

refused to accept the ticket at that time.

[23] On these facts, we cannot find that there was even an element of neglect on the part of Cst. Lawlor.

[24] We acknowledge that the notes on a Summary Offence Ticket are usually used by an officer to refresh his or her memory, when called to testify at a hearing. According to Ms. Piorko, Cst. Lawlor was the only officer called to testify. Had the matter proceeded to a Summary Offence trial, he would have been unable to confirm that Ms. Piorko was skating. His only evidence would have been that this was what he had been told when he generated the ticket. That would amount to hearsay. The error could have resulted in an acquittal, had the Crown proceeded to hearing.

[25] In this case, Cst. Rodgers or Cst. Germain would have been able to testify that Ms. Piorko had not produced POV and was inside the oval compound where POV was required. They could confirm that she refused to produce POV. But the decision as to what witnesses would be called was one for the Crown to determine.

[26] In short, this was an error in an entry, possibly significant to a conviction outcome, but it was not an error by Cst. Lawlor.

[27] The complaint is dismissed.

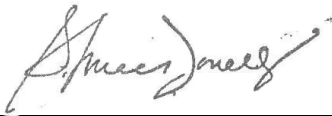


Dated at Halifax, Nova Scotia, this 5<sup>th</sup> day of November 2024.



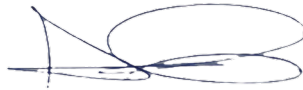
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Jean McKenna, Chair



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Hon. Simon MacDonald, Vice-Chair



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Siobhan Doyle, Board Member