

DECISION

File No.: PC-19-0082

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 **Carrie Low**, Complainant, against **Cst. Bojan Novakovic & Halifax Regional Police**, requesting a review of a decision made by Inspector Derrick Boyd dated December 17, 2020.

BEFORE: Jean McKenna, Chair
John Withrow, Member
Nadine Bernard, Member

COUNSEL: Jason Cooke KC & Cydney Kane, Counsel for Carrie Low
Brian Bailey, Counsel for Cst. Bojan Novakovic
Edward (Ted) Murphy, Counsel for HRP

HEARING DATE: July 10, 11, 13, 17 – 20, 2023

LAST BRIEF ON PENALTY March 27, 2024

RECEIVED:

DECISION DATE: April 24, 2024

[1] The complaint of Carrie Low was heard by the Police Review Board on July 10, 11, 13, 17-20, 2023. Written submissions on the merits were provided by the parties, and the Board provided its decision on February 28, 2024. The complaints relate to the investigation of sexual assaults on Ms. Low in May of 2018. It has been a very long and winding road since that date, including police investigation of the crimes, charging of 2 individuals, criminal trial of one (the other having died prior to his trial), Police Complaint by Ms. Low, complaint declined by NSPC, judicial review of Commissioner's decision, HRP complaint investigation, and decision, appeal of that decision, and finally, hearing on the merits by the Police Review Board.

[2] The HRP review of Ms. Low's complaint, and in particular, her complaint against Cst. Novakovic, concluded that Cst. Novakovic had committed a disciplinary default. Inspector Derrick Boyd concluded:

“After reviewing the information made available to me, I do believe that Cst. Bojan Novakovic of the Halifax Regional Police was in violation of the neglect of duty disciplinary default by not properly collecting Ms. Low's clothing as evidence. Cst. Bojan Novakovic was made aware of the crime scene on May 20, 2018 by Ms. Low. Cst. Bojan Novakovic should have spoken with a supervisor to determine if the scene would be held regarding a warrant at that time”

[3] In its decision on the merits, the Board reviewed the following of several elements of Ms. Low's complaint , as outlined by her. The Board concluded:

“**Failure to collect essential evidence, specifically the clothing:** This is a failing of two particular officers, Cst. Novakovic and Cst. Smith (RCMP). As noted, Cst. Novakovic has been dealt with, and Cst. Smith is not within our disciplinary authority. The actions of two particular officers cannot be considered as the actions of HRP as a whole, and as soon as HRP became aware of this shortcoming, it immediately and strongly corrected the error... Had this information been entered on the electronic record (Versadex) it would have been available to any other officer, including the Sgt. overseeing SAIT. The reviewing or assigned member of SAIT would have then instructed that the clothing be picked up. The Board is satisfied that the actions of Cst. Novakovic (both the conduct of the interview, the failure to note the location of the clothing), would not attract any greater penalty than that imposed.....”

[4] In its decision on the merits, the Board commented “Although Cst. Novakovic has not appealed the penalty imposed by HRP, Ms. Low's appeal appears to encompass that issue. We will therefore accept written submissions on penalty from the parties”.

[5] In Ms. Low's post hearing submissions on the merits, she stated "A penalty of 8 hours is entirely insufficient" As with Cst. Novakovic, HRP likewise did not appeal its own decision, of course. In their written submissions on penalty, Mr. Murphy, Counsel for HRP and Mr. Bailey, counsel for Cst. Novakovic both maintain that the 8 hour penalty (which has been served) is sufficient and appropriate.

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

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

In his submissions on the merits, Mr. Cooke, on behalf of Ms. Low, argued that the penalty imposed by HRP was inadequate, However, in response to the Board's request for submissions on penalty, Mr. Cooke refused to make any submissions:

"We are afraid that we are unable to make submissions on penalty as it is not clear what finding, if any, was made against Constable Bojan Novakovic. In particular, the decision does not appear to address the issue of whether Constable Novakovic committed a disciplinary default pursuant to section 24(3)(a) of the *Police Regulations* N.S. Reg. 230/2005. Based on the above and other concerns related to the Decision we will be seeking judicial review of the Decision. We will provide notice of same to the Police Review Board and other parties once filed"

[7] Aside from the remarks in the decision on the merits, which do reference the failing of Cst. Novakovic, to pick up the clothing and to note on Versadex that Ms. Low had the clothing, the request by the Board for submissions on penalty makes it abundantly clear that we did find and do accept that there was a disciplinary default by Cst. Novakovic. If no default, why would there be a request for submissions on penalty? It is difficult to understand why Ms. Low and her counsel refuse to even address the issue of penalty. Whether or not Ms. Low through her counsel was willing to make submission, the Board is required to complete the matter before it, including penalty. In this case, the hearing is bifurcated, none the less, it is a single file.

[8] In **Gilbert** (above), the Board followed the reasoning set out in *Ceyssens*:

The disposition must comply with the purposes of the police disciplinary process;

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

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

[9] In this case, the interests of the employer, and those of Ms. Low are protected by the penalty imposed by Insp. Boyd. Cst. Novakovic's errors were immediately corrected by his superior when discovered and Cst. Novakovic immediately acted upon that direction. The potential negative consequences to Ms. Low's investigation were avoided. The Board finds that the discipline imposed by HRP accords with the the purposes of the process; the employer acted immediately, firmly, and effectively when it learned of the error, and then, while respecting the rights of the constable, dealt with the matter in the context of police discipline.

[10] **Second Principle – Corrective Dispositions Should Prevail, Where Possible.**

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

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

In this case, the penalty imposed, coupled with the prompt corrective action when the failure was discovered, was corrective; and from Cst. Novakovic's immediate actions, when the error was pointed out to him, and acceptance of the penalty, on the record at the hearing, suggests that the penalty was remedial, and corrective...

[11] **Third Principle – Presumption of the Lowest of Disposition**

The third principle is that a respondent police officer is entitled to the most favourable disposition in the circumstances of the case, where possible. There is nothing in Cst. Novakovic's conduct that would suggest that the disposition should be any greater. There is no negative employment history, or any aggravating conduct, and no evidence of any prior discipline.

[12] **Fouth Principle – Proportionality**

Proportionality is the fourth principal that governs the process of crafting an appropriate disposition when an allegation of police misconduct is proved. A succinct statement of the law appears in an Australian case: It is a fundamental proposition that any punishment imposed must have been proportionate to the offence, given due regard to those special considerations applicable to service in the police force. In this case, as noted by Mr. Bailey, Cst. Novakovic's involvement in this file was minimal. While other issues arose over the period of time that the criminal investigation occurred, those issues are unrelated to Cst. Novakovic, and should not impact the penalty. The penalty imposed must relate to his actions only.

[13] **Fifth Principle – Higher Standard Applicable to the Constabulary**

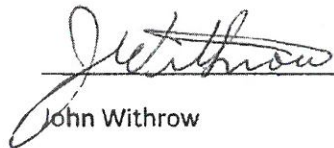
The fifth principle is that the law holds police conduct to a higher standard. Court and tribunal decisions have consistently embraced the concept that police officers should be held to a higher standard of behaviour compared to other employees or members of the public. This principle has no application to this case, where his conduct is not examined in comparison with what a non-officer may have done.

[14] The Board agrees with the submissions on behalf of HRP and Cst. Novakovic that the penalty imposed by HRP is appropriate. The involvement of Cst. Novakovic was a very small part of the process, and fortunately, the impact was minimal, although it had the potential to result in the loss of important evidence. The complaint and disposition appears to have been a valuable lesson for the constable.

Dated at Halifax, Nova Scotia this 2nd day of May, 2024.



Jean McKenna



John Withrow



Nadine Bernard

Distribution: Jason Cooke KC & Cydney Kane, Counsel for Carrie Low
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