

**NOVA SCOTIA POLICE REVIEW BOARD**

**IN THE MATTER OF:** *The Police Act, R.S.N.S. 1989, Chapter 348 and the Regulations made pursuant thereto*

**- and -**

**IN THE MATTER OF:** A Notice of Review, in Form 13, filed by **SERGEANT WAYNE WOODEN**, Member, requesting a review of Decisions made by Deputy Chief Robert Barss on the 22<sup>nd</sup> day of September, 2000 before the Nova Scotia Police Review Board.

**BEFORE:** Brian Creighton - Chair  
Linda Fraser - Member  
Brad Barton - Member

**COUNSEL:** Mr. Patrick Duncan - on behalf of Sergeant Wayne Wooden  
Ms. Sandra Arab-Clarke - on behalf of the Halifax Regional Police

**HEARING DATE:** November 23 & 24, December 4, 5, 18, 2000, Jan 18 & 19, 2001

**PLACE** Hearing Room of the Utility & Review Board, 1601 Lower Water Street, Suite 300, Halifax, Nova Scotia and the Old Town Council Chambers, Dutch Village Road, Halifax, Nova Scotia

**DECISION DATE:** Written Decision: April 20, 2001

**DECISION:** Appeal Upheld in part

These proceedings came before the Nova Scotia Police Review Board by way of an appeal in Form 13 received by the Registrar on September 29, 2000. Sergeant Wayne Wooden is a member of the Halifax Regional Police, and as a result of decisions by Deputy Chief Robert Barss he was demoted from Sergeant to First Class Constable. The hearing of this appeal included seven days of oral evidence and numerous exhibits.

### The Complaint

On the 3rd day of March, 2000, Inspector David C. Murphy and Inspector Stephen Sykes of the Halifax Regional Police Service filed with Deputy Chief Barss, a written allegation that Sergeant Wooden had neglected his duty in relation to a number of investigation files which had been conducted by Constable Hugh MacLean. Sergeant Wooden had Case Management responsibility over these files. At all times material to these proceedings Sergeant Wooden was a Squad Sergeant assigned to East Division. There are three divisions in the Halifax Regional Municipality: East being, Dartmouth; Central, being Halifax, and West, being Bedford.

Each division has four shifts and there are two sergeants in command of each shift. Sergeant Wooden and Sergeant Griffin were in command of Watch 3 in the East Division. A full complement of members in the East Division included two sergeants and seventeen constables. The basis of the written complaint filed by Inspectors Murphy and Sykes was that Sergeant Wooden had neglected his duty under *Police Act* Regulation 5(1)(c)(i) by failing to properly supervise Constable MacLean.

Constable MacLean was a constable under Sergeant Wooden's command. It is alleged that Sergeant Wooden failed to perform his Case Management responsibilities for seven files investigated by Constable MacLean.

Deputy Chief Barss received the written allegations in his capacity as the disciplinary authority of the Halifax Regional Police. Deputy Chief Barss appointed Staff Sergeant William Hollis to investigate these written complaints. Staff Sergeant Hollis prepared and served seven notices of allegation in Form 8 relative to the seven incidents. It was alleged that Sergeant Wooden did not carry out his Case Management responsibilities. Each of the Form 8's stated as follows:

“neglected to, or without adequate reason, failing to promptly, properly or diligently perform a duty as a member of the a police force contrary to Section 5(1)(c)(i) of the Nova Scotia Police Act.”

On September 25, 2000, Deputy Chief Barss demoted Sergeant Wooden to First Class Constable.

### Sergeant Wooden's Background

At the time of these proceedings Sergeant Wayne Wooden was 49 years of age and is married with two children. He joined the Halifax Police Department at age 20, and has almost 30 years of service. During his employment as a police officer Sergeant Wooden completed his

Bachelor of Arts at St. Mary's, and obtained a Certificate of Criminology. He has studied conversational French, teaches CPR for various groups in the community, and volunteers time to soccer leagues for young people and his son's Cadet group.

Sergeant Wooden attained the rank of Sergeant in 1987 while working in the Criminal Investigation's Division. He transferred to Charlie Zone as a Squad Sergeant. The Halifax Police Department's Charlie Zone is in the downtown area. Sergeant Wooden served as a commander in the three Halifax zones, Alpha, Bravo and Charlie. From January 1995 to July 1997, Sergeant Wooden, was a Supervisor in the Communications Centre which is now known as the 911 Centre. The 911 Centre is responsible for all Halifax Regional Police and Emergency Services dispatching and communications.

Sergeant Wooden was transferred to East Division as a Squad Sergeant at the end of 1997 and remained there until early 2000. As a result of the decision which form the subject matter of these proceedings, Sergeant Wooden was reassigned to other duties in early 2000.

Sergeant Wooden tendered to the Board various documents which satisfied the Board as to the quality of his service to his employers. Sergeant Wooden has received commendations and his performance evaluations have consistently placed him in the above average and outstanding categories. The Board finds that Sergeant Wooden's records indicate he performed his duties as a police officer and supervisor throughout his career in an above average manner.

## Case Management

The Board refers to the Halifax Regional Police Consolidated Case Management Policy as set out in Exhibit 1, Volume I at Tab B.

In that policy, Case Management is defined as follows:

"Case Management is the management of the investigative process using a screening mechanism. This mechanism facilitates decision making regarding the continuance of a followup investigation or the suspension of further investigative effort utilizing early case closure. The final decision is ultimately based on the existence of solvability factors obtained at the preliminary investigative level."

The Halifax Police Department and subsequently the consolidated Halifax Regional Police have a substantial background in developing and implementing Case Management. Each police officer is responsible to his Case Manager and/or Supervisors and ultimately to Crown Prosecutors and courts to ensure that their files are handled diligently, promptly and thoroughly.

The Board heard evidence that Case Management Policy and Procedure continues to evolve as problems are identified. All files are computerized and Case Management includes both the paper file and the computer file.

Under earlier versions of Case Management in the Halifax Police Department, each patrol squad was commanded by a Sergeant. The Sergeant has a corporal under his command who was

tasked with the Case Management duties. Under the new amalgamated police policy, Case Management is delegated to the squad sergeants. We refer specifically to Case Management Policy 1, 2.C:

C. Squad Sergeants

A squad sergeant shall:

- a. Review all incident reports generated by the watch members for Incident Reports/Dacts and report on any deficiencies in the appropriate member
- b. Perform the case manager's duties for his/her squad as outlined in BI-27 inclusive above.

Case Management is about followup and review. The Squad Sergeant/Case Manager is required to review all of the files of every officers under this command. Squad Sergeants are required to review files for completeness, solvability factors, to initiate followup investigations and to sign-off files that are complete and ready for the crown prosecutors and the courts. Once a file is complete, the Squad Sergeant makes confirmatory entries in the computerized Case Management system. He then transfers the hard file to the Police Services Court Section for processing.

The Board commends the Halifax Regional Police in its development of Case Management Policies and Procedures. It is evident that Deputy Chief Barss and other senior staff officers of the Halifax Regional Police are continually striving to improve this process. The Board accepts the evidence of Deputy Chief Barss presented at these proceedings in regards to the importance of the

Case Management process. The Board is satisfied that the Case Management system is integral to ensuring effective policing.

### Sergeant Wooden's Disciplinary Default

The Board heard evidence from numerous witnesses from the Halifax Regional Police. These witnesses included Inspector Stephen Sykes, Sergeant Michael Spearns, Staff Sergeant John Peach, Superintendent Anthony (Tony) Burbridge and Staff Sergeant Donald Fox. The evidence was clear and uncontradicted by Sergeant Wooden.

Sergeant Wooden's practice was to delegate some of his Case Management responsibility to the officers under his command. In other words, Sergeant Wooden did not do a complete review of all of his officer's files before coding them for closure or other activity. Sergeant Wooden acknowledges he neglected to review all of the files as required by the policy. Sergeant Wooden stated that on occasion he relied on his constables to case manage their own files. Sergeant Wooden states he had faith in the officers under his command.

The Board finds that in all seven incidents that form the subject matter of these proceedings that Sergeant Wooden did not discharge his Case Management responsibilities, and is in default under the *Nova Scotia Police Act Regulations* 5(1)(c)(i) which states as follows:

**5** (1) A member of a police force commits a disciplinary default where the member

- (a) engages in discreditable conduct by
  
- (c) neglects duties by
  - (i) neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member of a police force,

The Board finds that Sergeant Wayne Wooden did breach Section 5(1)(c)(i) of the *Nova Scotia Police Act* Regulations. He did, without adequate reason, fail to promptly, properly or diligently perform a duty as a member of a police force. The specific duty in which he failed to perform was the failure, in seven instances, to complete his Case Management responsibilities as Squad Sergeant. These responsibilities were known by Sergeant Wooden.

In stating that Sergeant Wooden's failure to carry out Case Management functions breached the Code of Discipline and Conduct, the Board confirms its reluctance to discipline officers in relation to failure to strictly adhere to internal Police Service Policies and Standard Operating Procedures. Policies and Standard Operating Procedures are in themselves not specific duties and responsibilities. Standard Operating Procedures and Policies are implemented to ensure a police department and its members attain a high standard of performance and a consistent level of policing. This Board has stated in previous decisions its reluctance to discipline officers on the basis only of failure to comply strictly with Standard Operating Procedures and Policies. The Board reaffirms this position.

However, it is not Sergeant Wooden's failure to strictly follow a policy or Standard Operating Procedure which is the subject matter of these proceedings. In the seven cases which form the

subject matter of these proceedings, Sergeant Wooden did not carry out his Case Management responsibilities at all. He case managed by unauthorized delegation.

### Penalty

In assessing a penalty against Sergeant Wooden in these proceedings, the Board must consider various factors. The seriousness of the matter complained of, and the performance and disciplinary record. The Board specifically considered the following factors as articulated in Paul Ceysenns' Legal Aspects of Policing, Chapter 5, page 10 1, as follows:

(e) Considerations Affecting Discipline

A variety of considerations apply to the process of determining an appropriate disposition in the event misconduct is established. These considerations may constitute mitigating or aggravating factors, depending on the particular misconduct:

1. Public Interest
2. Seriousness of the Misconduct
3. Recognition of die Seriousness of the Misconduct
4. Employment History
5. Need for Deterrence
6. Ability to Reform or Rehabilitate the Police Officer
7. Damage to the Reputation of the Police Officer.
8. Handicap and Other Relevant Personal Circumstances
9. Effect on Police Officer and Police Officer's Fan-lily
10. Management Approach to Misconduct in Question
11. Consistency of Disposition
12. Financial Loss Resulting from Unpaid Interim Administrative Suspension
13. Effect of Publicity

1. Public Interest

It is in the public interest to ensure that all files under investigation by the police service are processed to completion or closure. In the circumstances of this case, the evidence before this Board indicates that seven files that were the responsibility of Constable Hugh MacLean went missing or were incomplete. If Sergeant Wooden had completed his Supervisory/Case Management responsibilities in accordance with the department policy, he would undoubtedly have discovered Constable MacLean's default. The Board notes that two of the cases were domestic disturbances and another was a breathalyser case and recognizes the potential for harm.

The Board has no difficulty stating that the administration of justice in the Halifax Regional Municipality could be brought into dispute by the failure of Sergeant Wooden or supervisors to perform their Case Management responsibilities.

## 2. Seriousness of Misconduct

The seriousness of Sergeant Wooden's conduct can be viewed from many perspectives. Sergeant Wooden's defaults were of omission and not of commission. Sergeant Wooden omitted to carry out Case Management responsibilities because he relied on his officers to properly process their own files. Sergeant Wooden's explanation of this failure was the constant challenge of balancing his other Squad Sergeant responsibilities. The Board accepts that the position of Squad Sergeant in the East Division of the Halifax Regional Municipality during the time in question carried many and varied responsibilities. Ms. Arab-Clarke on behalf of the Halifax Regional Police introduced evidence in this proceeding to demonstrate that the Case Management responsibilities in themselves were not overly onerous, and therefore Sergeant Wooden had more than sufficient time on any shift to carry out his Case Management responsibilities. The Board accepts this evidence.

Sergeant Wooden's response is that Case Management is only one of many responsibilities of a Squad Sergeants. He suggested to the Board that on a daily and regular basis he must choose between the many responsibilities assigned to him. The delegating of file review to the officers

completing the investigations was one way he chose to respond. In his considered opinion, the East Division squad has good police officers with significant seniority whom he believed he could trust.

Sergeant Wooden stated that during some shifts any time spent by a Squad Sergeant on Case Management can take away from other important responsibilities, and that senior management does not provide much assistance to the Squad Sergeants in prioritizing their responsibilities between Case Management and other duties. Council for the police service did not lead evidence directly on point of how Squad Sergeants are to allocate their time among the various responsibilities assigned to them. Evidence was directed at showing that Squad Sergeants have more than enough time to carry out their responsibilities. Computer printouts were introduced showing the number of calls the officers, and Sergeant Wooden were involved in and the number of Case Management files that Sergeant Wooden closed. However, in the view of the Board, that evidence was not helpful in addressing the issue of how Squad Sergeants are expected to allocate their time among their various responsibilities. The Board is satisfied that Squad Sergeants are busy and under constant pressure to ensure quality policing service is delivered in their divisions.

It is a serious matter that Sergeant Wooden in at least seven instances did not perform his Case Management responsibilities. The Board accepts that senior management in the Halifax Regional Police service has, through its Standard Operating Procedures and other directions, emphasized to the Squad Sergeants the importance of their Case Management responsibilities. The Board understands the difficulty Squad Sergeants face in choosing between carrying out Case Management and other responsibilities. Indeed, if Sergeant Wooden had only failed to properly case

manage one file, the Board may not consider that in itself a disciplinary default. The Board has been consistent in its view that the failure in one instance to follow a Standard Operating Procedure is not in itself disciplinary. What sets this matter apart is the Sergeant's clear intent to delegate his Case Management responsibilities to his officers.

Sergeant Wooden had opportunity to provide documentation on a consistent basis to his superiors as to the difficulties he had balancing his Case Management duties with other responsibilities. If senior management have overly burdened squad sergeants, squad sergeants have a responsibility to document the situation. Sergeant Wooden gave evidence that he had informed some senior officers of his concerns but there are no reports, letters or mailboxes clearly articulating his stated dilemma.

### 3. Recognition of Seriousness of Misconduct.

Sergeant Wooden fully recognized the seriousness of his failure to properly case manage and the consequences thereof. He was evidently quite shocked and distressed that he couldn't rely on an officer under his command to manage their own files. It is fair to say that prior to these disciplinary proceedings, Sergeant Wooden did not appreciate the primacy of the Case Management process in department's management structure. Senior management, including Deputy Chief Barss, evidently consider Case Management responsibilities of Squad Sergeants to be a primary responsibility. The Board believes that Sergeant Wooden now clearly understands and recognizes senior management's position in this regard and the importance of Case Management.

4. Employment History

As described earlier in this decision, all of the evidence before the Board in these proceedings was that Sergeant Wooden's employment history is above average. There has been no prior disciplinary or other action against Sergeant Wooden during his service with the Halifax Regional Police brought to the Board's attention.

5. Need for Deterrence

The Board is satisfied that any finding of default against Sergeant Wooden, will deter other Squad Sergeants from similar conduct. To ensure Squad Sergeants understand this, it is the Board's opinion that what is required in this first disciplinary case against Sergeant Wooden is a penalty greater than a reprimand but lesser than the demotion. The Board would also recommend the authority be cognizant of the various factors which ought to be considered in assessing penalty.

At common law, a demotion is equivalent to a dismissal. In the circumstances of this case, there was no satisfactory explanation presented to the Board as to why Sergeant Wooden should in effect be dismissed. The Board is satisfied that a penalty greater than a reprimand but less than a demotion would be satisfactory to deter Sergeant Wooden and other officers from failing to carry out their Case Management responsibilities. Senior management has in no uncertain terms emphasized the importance of Case Management responsibility by the disciplinary action against Sergeant Wooden. This decision will undoubtedly encourage all squad sergeants to execute their

Case Management responsibilities. If these proceedings do not result in deterrence, then department authorities can take future disciplinary proceedings against supervisors in default. The demotion of this officer to effectively send a message of deterrence to other officers is not warranted by the evidence presented in this instance.

6. Ability to Reform or Rehabilitate the Police Officer

The Board believes that no action needs to be taken to rehabilitate Sergeant Wooden. Sergeant Wooden is a well trained and honourable police officer. The Board does suggest, however, that senior management ought to review with Sergeant Wooden how he actually carries out his Case Management responsibilities to ensure he has a complete understanding of exactly procedures he must follow. There was some question before the Board as to the extent Squad Sergeants have been fully trained as to their Case Management responsibilities. The Board does not express opinion as to whether there has been adequate training but does believe periodic oversight or auditing would ensure that Sergeant Wooden, and other Sergeants, have been adequately trained in Case Management.

7. Handicap or Other Relevant Personal Circumstances

There was no handicap or other relevant personal circumstances in the evidence before the Board that should affect this decision.

8. Effect on Police Officer and Police Officer's Family

It is the Board's view that the decision in this case should be made without reference to how the impact would affect Sergeant Wooden or his family. Clearly, a demotion could have a great impact on Sergeant Wooden and his family. However, if that were the appropriate penalty, the Board would have no hesitation in demoting him.

9. Management Approach to Misconduct in Question

The Board is nothing but complimentary as regards the actions of Halifax Regional Police senior management in investigating the apparent failure of Constable Hugh MacLean's cases to be properly processed. As a result of senior management's diligence, they uncovered Sergeant Wooden's disciplinary defaults.

As stated earlier, Sergeant Wooden's evidence suggested there was some question as to whether or not senior management had afforded Sergeant Wooden and other Squad Sergeants sufficient training in their Case Management responsibilities. Patrick Duncan, council for Sergeant Wooden argued that because Case Management policies were constantly being upgraded senior management should have frequent courses to ensure that Squad Sergeants are properly trained as to their responsibilities. The Board make no findings against senior management in this regard.

10. Consistency of Disposition

The Board is of the view that a senior officer with almost 30 years' experience should only be demoted under very serious circumstances. As a demotion is equivalent to a dismissal, a demotion instead of dismissal would be in recognition of the belief that a seriously delinquent officer could be rehabilitated. Demotion of Sergeant Wooden would be much a more severe punishment than the Board has supported in disciplinary defaults of similar seriousness.

11. Financial Results of Unpaid Interim Administrative Suspension

There is no interim suspension in this case. However, the Board is cognizant of the fact that this demotion of Sergeant Wooden would have a tremendous financial impact, both presently and on his retirement. Some evidence was presented, prepared by Superintendent Burbridge, giving his calculations of how the demotion would affect Sergeant Wooden. This evidence was not reviewed by either an actuary or a chartered accountant, and its accuracy was not otherwise verified or contradicted. The Board was satisfied the demotion would have severe financial impact on Sergeant Wooden. This level of financial impact on Sergeant Wooden is not justified in these circumstances.

12. Effect of Publicity

This matter is an internal disciplinary procedure and there is apt to be very little, if any publicity of this matter. Therefore, the Board did not consider the effect of publicity in its decision,

Conclusion

The Board finds that of the seven complaints against Sergeant Wooden all required disciplinary action. The Board restates that it was the pattern of conduct which is of most concern, and not each individual case that the Sergeant failed to case manage. The Board vacates the demotion of Sergeant Wooden, and suspends him without pay for a period of ten days.

The Board understands that as a result of Deputy Chief Barss' decision, Sergeant Wooden was laterally transferred to other responsibilities. The Board directs that if Sergeant Wooden wishes to be reassigned to his Squad Sergeant duties, he will be given the opportunity to be so reassigned. The lateral transfer is in itself a disciplinary penalty which the Board does not support in these circumstances.

In the totality of the circumstances, it is the Board's opinion that the most important aspect of this case is to send a clear message as to the importance of Case Management policies and procedures to other members of the Halifax Regional Police. The Board fully endorses the position of senior management that effective Case Management is of critical importance in modern policing. We expect the results of this decision will be positive for the Halifax Regional Police.

DATED at Halifax, Nova Scotia this 20th day of April, 2001

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**BRIAN CREIGHTON**

Chair

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**BRAD BARTON**

Member

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**LINDA FRASER**

Member

Distribution:

Sergeant Wayne Wooden - Member - Halifax Regional Police  
Mr. Patrick Duncan - Solicitor for the named officer  
D/Chief Robert Barss - Halifax Regional Police Service  
Chief David P. McKinnon - Halifax Regional Police Service  
Ms. Sandra Arab/Clarke - Solicitor on behalf of the D/Chief Barrs & the HRM  
Mr. Brian Creighton - Chair NS Police Review Board  
Ms. Linda Fraser - Member, NS Police Review Board  
Mr. Brad Barton - Member, NS Police Review Board  
Mr. James Beaver - Policing Services Division

**NSPRB-00-0041**

**IN THE MATTER OF:**

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**D E C I S I O N**

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Before:

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Linda Fraser - Member  
Brad Barton - Member