

**DECISION**

**NSPRB-00-0130**

**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:** Notice of Review in Form 13 filed by **CONSTABLE PETER CARR**, Member, requesting a review of Decision made by Chief Brent Crowhurst on the 30<sup>th</sup> day of October, 2000.

**BEFORE:** Brian Creighton - Chair  
Linda Fraser - Member  
Theresa Meuse - Member

**COUNSEL:** Mr. David Fisher - on behalf of Constable Carr  
Mr. David Bright - on behalf of Chief Crowhurst and the Town of Lunenburg/Mahone Bay

**HEARING DATE:** January 30 and 31, 2001

**PLACE** Lunenburg Town Council Chambers, 120 Townsend Street, Lunenburg, Nova Scotia

**DECISION DATE:** Written Decision - March 19, 2001

**DECISION:** Appeal Upheld - Reinstated

These proceedings are an appeal by way of a hearing *de novo* before the Nova Scotia Police Review Board, and a Form 13 (Notice of Review) dated November 10, 2000 on behalf of Constable Peter Carr. The appeal is in relation to a decision made by Chief Brent Crowhurst on the 30<sup>th</sup> day of October, 2000. The allegations confirmed by Chief Crowhurst on the Form 12 (Disposition of Internal Disciplinary Proceedings) are as follows:

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

(a) *engages in discreditable conduct by*

(i) acting in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the police force,

(d) *engages in deceit by*

(i) wilfully or negligently making or signing a false, misleading or inaccurate written statement or entry in an official document or record,

Constable Carr graduated from the Atlantic Police Academy in May, 1999 and was hired by the Lunenburg Mahone Bay Police Service as a police officer on July 14, 1999. Limited evidence was heard concerning Constable Carr's performance during his probationary period and Chief Crowhurst concerns about Constable Carr's performance. The issues that appeared to be of concern to the Chief included Carr's failure to perform regular foot patrols, and on one occasion he was cautioned against driving too fast while on patrol.

On July 30, 2000, Constable Peter Carr was working a shift which began at 6:00 p.m. on July 29. Prior to midnight, Carr was patrolling the Mahone Bay area alone in his police cruiser. At

approximately midnight Constable Carr exited the patrol car and began a foot patrol through an area park and ball field. He observed two people coming towards him and he stepped into the bushes so he would not be seen. The individuals walked past him toward the area of the dugout. Constable Carr continued on his patrol and walked toward the dugout area as well. He did not know at that time if there was anyone in there but wanted to check it out. When he came around the corner of the dugout he startled the two people who were identified as Mr. Dan Abriel and Ms. Jessica Myers. When Constable Carr approached them he observed Mr. Abriel, then age 17, in possession of what was apparently marijuana and some other substance in a capsule. These items were sitting on top of a skate board perched on Mr. Abriel's lap. Constable Carr suspected the capsules contained mescaline because there had been a recent drug bust in the area involving mescaline.

Constable Carr requested the teenagers identify themselves. He then arrested Dan Abriel and read him his rights. Jessica Myers was permitted to leave after identifying herself. After Constable Carr read Mr. Abriel his rights, Mr. Abriel advised Constable Carr that he wanted to speak with his lawyer. Despite Mr. Abriel's request for an opportunity to speak to a lawyer, while walking back to the police car, Constable Carr questioned Mr. Abriel on whether the pills he had found on his person contained mescaline. Mr. Abriel allegedly replied "that is what I was told when I got it."

Upon determining that this young offender wished to speak to his lawyer, Constable Carr had no right to ask Mr. Abriel any questions concerning the subject matter of the arrest. This conversation was a breach of Section 10 of the Canadian Charter of Rights and Freedoms which provides as follows:

S. 10 Everyone has a right on arrest or detention .....

(b) to retain and instruct counsel without delay and to be informed of that right....

The Supreme Court of Canada has confirmed that which ought to be obvious to any police officer. Once an accused or detained person has stated they wish to instruct counsel, further communications concerning the subject matter of the arrest or detention are not permitted. The Board referred to R. v. Manninen, [1987], 1 S.C.R 1233, 34 C.C.C. (3d) 385 58 C.R. (3d) 97; and R. v. Ross, [ 1989] 1 S.C.R 3, 46 C.C.C. (3d) 129, 67 C.R. (3d) 209.

Constable Carr then drove Mr. Abriel to the Lunenburg Mahone Bay Police Station which is situated in the Town of Lunenburg. He placed him into the detention/interview room to await the arrival of his father, and also to provide Mr. Abriel an opportunity to speak to and take instruction from counsel.

It has been the policy for five years in Lunenburg Mahone Bay to videotape statements of accused persons. Therefore, in the interview room there is a discreetly placed video camera with a microphone. In the hallway outside the inter-view room there is a telephone from which persons may call their lawyers. The purpose of the surreptitiously placed video camera was not for the recording of all activity in the interview room. It was placed there specifically for the videotaping of statements of accused persons.

Constable Carr had the video camera on for much of the 50 minutes, more or less, that Mr. Abriel was in custody. Constable Carr's explanation for the video camera being left on was that a small packet of tinfoil containing marijuana was found in one corner of the room. Constable Carr suspected Mr. Abriel was responsible for this packet and he hoped the video would catch him doing something incriminating.

Constable Carr did shut the video camera off during the time when Mr. Abriel's father, Dr. Abriel, visited with his son. However, he left the video on when Dan Abriel went into the hallway to telephone his lawyer, Mr. Burke. The camera was taping an empty room.

Shortly after Mr. Abriel was released into the care of his parents, Constable Carr decided to view the videotape. The videotape of Mr. Abriel in the interview room was uneventful. The Board observed Constable Carr treating Mr. Abriel professionally and respectfully. He read him his rights and did not try to elicit any more information. Constable Carr read Mr. Abriel his rights a total of three times from the point of detention to the time of release.

When Mr. Abriel was outside the interview room, the door was closed but a muffled voice could be heard. This was evidently Mr. Abriel speaking on the telephone to his lawyer. Some words were slightly audible, and it appears that the person speaking may have used the words "mescaline" and "marijuana". Constable Carr acknowledged he listened to some or all of this conversation.

All communications between an accused and his lawyer are privileged. In relation to

criminal proceedings, this is confirmed pursuant to the Criminal Code, S. 189(6) which states

Privileged evidence

- (6) Any information obtained by an interception that, but for the interception, would have been privileged remains privileged and inadmissible as evidence without the consent of the person enjoying the privilege.

R.S., 1985, c. C-46, s. 189; 1993, c. 40, s. 10.

The Board also refers to the Canada Evidence Act, S - 30(10) which provides as follows:

**30.** Evidence inadmissible under this section

- (10) Nothing in this section renders admissible in evidence in any legal proceeding
  - (a) such part of any record as is proved to be
    - (i) a record made in the course of an investigation or inquiry,
    - (ii) a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding,
    - (iii) a record in respect of the production of which any privilege exists and is claimed, or
    - (iv) a record of or alluding to a statement made by a person who is not, or if he were living and of sound mind would not be, competent and compellable to disclose in the legal proceeding a matter disclosed in the record;
  - (b) any record the production of which would be contrary to public policy; or
  - (c) any transcript or recording of evidence taken in the course of another legal proceeding.

Therefore, there is no possibility of Constable Carr making use of what he heard during the criminal proceeding against Dan Abriel or for any other legal purpose.

Before reviewing the rest of the evidence relevant to these proceedings, the Board will emphasize the importance of how Constable Carr came to believe that Dan Abriel was in possession of mescaline. It was for two reasons: there had been a recent arrest in the area of a person or persons in possession of mescaline; and Dan Abriel told Constable Carr he believed he was in possession of mescaline. The Board concluded that on and from the time of Dan Abriel's arrest, Constable Carr reasonably believed that Dan Abriel was probably in possession of mescaline. It is of course not relevant to these proceedings whether Dan Abriel was in fact in possession of mescaline. It is only important to determine when Constable Carr had a settled belief as to the chemical composition of the capsules found on the person of Dan Abriel.

Constable Carr believed he had done nothing wrong by asking questions of Dan Abriel. This sets the stage for what happened next. On and from the date of incident, Constable Carr had no qualms about sharing information concerning the arrest of Dan Abriel with the members of the Lunenburg Mahone Bay Police Service. It was the Board's perception that Constable Peter Carr was excited and proud that he had arrested Dan Abriel in possession of illegal substances.

Constable Stephen Shannon was a classmate of Constable Carr's at the Atlantic Police Academy, and they joined the Lunenburg Mahone Police Service at about the same time. In the early morning hours of July 30, 2000, Constable Shannon was just finishing up his shift. He remembers Constable Carr telling him that he had caught Dan Abriel that evening rolling a joint and in the possession of mescaline. Constable Shannon recollected Peter Carr coming out of the interview

room and speaking to Constable Susan Foote about the event. He remembers Constable Carr telling Susan Foote that he believed the white power in the capsules was mescaline.

Three or four days later (according to Constable Shannon's best recollection), Constable Carr spoke to him concerning the arrest of Dan Abriel. Constable Shannon was taken aback when Constable Carr told him the substance was mescaline and that Constable Carr knew it was mescaline because he had heard Dan Abriel say it was on the videotape. He recollected that Carr told him he had to turn the volume up loud in order to hear what he heard.

Of great assistance to the Board in these proceedings was that Dan Abriel waived privilege and permitted the Board to watch and listen to the videotape. The Board was therefore permitted to reach its own conclusions as to the importance of the videotape. The Board was satisfied that unless there was digital enhancement by persons skilled in the field, one could not possibly have understood the conversation between Dan Abriel and his lawyer, Pat Burke. The Board members may have heard the word "mescaline" or "marijuana, for whatever value that might have had. The Board can only speculate as to what questions, lawyer, Pat Burke may have asked Mr. Abriel to elicit this response, or what Mr. Abriel was trying to say to Mr. Burke. Again, whatever Constable Carr may have heard was not and could not be of any evidentiary value in court.

Peter Carr's evidence is that he told Stephen Shannon that he had the tape on loud and inadvertently heard Dan Abriel speaking to his lawyer. Stephen Shannon's evidence was that Peter Carr told him he had to turn the volume up loud in order to hear what he heard. Regardless, Stephen

Shannon was taken aback by the fact that any portion of the Abriel/Burke conversation was recorded, and that Constable Carr had heard something of that conversation. Constable Shannon told Constable Carr immediately that this was "really, really illegal" and he was evidently distressed by his perception of Constable Carr's actions. Constable Shannon is to be commended for his reaction to his perception of Constable Carr's actions. Based on his perceptions, he rightfully reported this matter to Acting Chief and Second in Command of the Lunenburg-Mahone Bay Police Service, Sergeant George D. Smith. Constable Shannon did not, however, reduce his complaint in writing, nor does it appear he was advised to do so by either Sergeant Smith or Chief Crowhurst.

Sergeant Smith reviewed the Abriel file and concluded that perhaps a *Police Act* investigation should be carried out in relation to the allegedly intercepted solicitor-client communications. In reviewing the Abriel file, Sergeant Smith was suspicious as to why Constable Carr believed the substance that Dan Abriel had was mescaline. He concluded that Constable Carr believed the substance was mescaline because Carr had listened to the videotape. He referred the matter to Chief Crowhurst.

Based upon what he was told by Sergeant Smith, Chief Crowhurst decided that Constable Carr should be investigated for a default under the *Police Act* for the videotaping and/or listening to the conversation between Dan Abriel and lawyer Pat Burke. Sergeant Smith also did not record the complaint in writing and again it does not appear that he advised to by the Chief.

Neither Constable Shannon, Chief Crowhurst or Sergeant Smith reduced their concerns/complaint to writing. The commencement of an internal disciplinary process is provided for in Regulation 20.

- 20**
- (1)** A member of a police force may allege that another member of that police force has committed a disciplinary default by filing a written allegation with
    - (a)** the chief officer of the police force; or
    - (b)** where the allegation relates to the chief officer of the police force, the board.
  - (2)** No proceedings for an alleged disciplinary default shall be commenced if more than six months have elapsed since the occurrence of the alleged disciplinary default.
  - (3)** For the purpose of this regulation, proceedings are commenced at the time a notice of allegation in Form 8 of the Schedule is served on a member, or in the case of a member who is absent without leave or avoiding service, at the time a notice of allegation in Form 8 is signed by the authority.
  - (4)** The authority to whom a written allegation is made shall give notice of the allegation in Form 8 of the Schedule to the member alleged to have committed the disciplinary default and shall forward a copy of the Form 8 to the Commission.

Therefore, *Police Act* Regulation 20(1) requires that the person who makes the allegation shall do so in writing, and 20(4) requires the Authority to give notice of the written allegation in Form 8 to the member complained of. Regulation 19(1) deems the Chief officer of a police force is the disciplinary authority for the force.

Chief Crowhurst is the Authority who has jurisdiction to deal with internal disciplinary matters unless he delegates his authority as provided in Regulation 19(2).

Chief Crowhurst decided to commence an investigation into Constable Carr's activities and he appointed Deputy Chief Mander from the Kentville Police Department to conduct the investigation. The evidence in these proceedings is that Chief Crowhurst initially wanted to investigate the videotaping of and listening to by Constable Carr of the telephone conversation between Dan Abriel and Pat Burke. However, as Chief Crowhurst did not reduce his concerns to writing, there is no documentary evidence of his actual intentions.

Deputy Chief Mander commenced his investigation of the allegations on August 30, 2000. On the 6th day of September, 2000 Deputy Chief Mander completed a Notice of Allegation of Internal Complaint against Constable Carr in Form 8 and served it on him. This allegation stated as follows:

"Acting in a manner reasonably likely to bring discredit on the reputation of the police force by intercepting and listening to a private privileged conversation between a person in custody and his solicitor."

Deputy Chief Mander completed his investigation on or about the 10<sup>th</sup> day of October, 2000. During the process of the investigation Deputy Chief Mander investigated not only the original complaint as described, but he also broadened the investigated. As regards to the original allegation, Deputy Chief Mander concluded the following:

- a. the taping of the conversation between Dan Abriel and Pat Burke was inadvertent; and

- b. that Constable Carr listened to the videotape for the express purpose of trying to overhear the conversation between Dan Abriel and Pat Burke.

He reached his conclusions based on an interview he had conducted with Constable Carr on the 28th day of September, 2000. The Board was provided a copy of this interview. The Board will comment as to the state of mind of Constable Carr when he was being interviewed by Deputy Chief Mander.

Constable Carr did not become aware of the complaint against him as is required by the service of a Form 8. He became aware of the initial complaint because Constable Shannon told him in conversation that he was under investigation. The Board heard some evidence to the effect that Constable Shannon felt responsible for telling him before he was served officially. Constable Shannon informed Constable Carr that he was in "very deep trouble".

Prior to his interview with Deputy Chief Mander, Constable Carr sought legal counsel. He states in the interview that "I was advised to come in here and see what you guys have to say, but I am going against it." In other words, Constable Carr had taken the advice of counsel not to speak with Deputy Chief Mander in the Police Act investigation and had gone against that advice.

To confuse matters, Deputy Chief Mander advised Constable Carr that he was not only investigating the matter for a Police Act complaint but also for possible criminal charges against Constable Carr.

The nature of those possible criminal charges were not described by Deputy Chief Mander although he offered to read Constable Carr his charter rights. If Constable Carr was not worried before he arrived for the interview, he could only by then be quite distressed.

Deputy Chief Mander proceeded with his interview. The Board concludes from the typed Transcript (Exhibit 7) that this interview was very formidable, and was more or less in the form of a cross-examination.

During this interview, Deputy Chief Mander examined some inconsistencies in Constable Carr's explanations as to why he had listened to the tape. There is no question in the Board's mind that Constable Carr listened to the videotape because he wanted to do so and it was his normal practice. In a written one page statement signed by Constable Carr on September 6, 2000, Constable Carr tried to expand on the reasons he would want to listen to the videotape. He said, "as I always do when I record anything, I review the tape afterwards to make notes of what was said and to record times."

It was this recording of times that Deputy Chief Mander picked up on. Deputy Chief Mander concluded that based on the documentary evidence in his possession, Constable Carr recorded times from his wristwatch and not the times from the videotape. Therefore, to the extent Constable Carr stated that he was reviewing the videotape for the purposes of recording times, Constable Carr appeared to Deputy Chief Mander to be untruthful.

Although the Board agrees with Deputy Chief Mander's assessment that Constable Carr was wrong in this instance, and possibly untruthful regarding this issue, the Board points out the inconsistency exposed in a cross-examination type interview of one small aspect of an incident does not in itself prove an allegation. Inconsistencies may be interpreted in many ways. Deputy Chief Mander had concluded that this inconsistency was evidence of an intentional coverup by Constable Carr of a disgraceful incident.

The Board respectfully disagrees with Deputy Chief Mander's conclusion. Constable Carr was not even under investigation for a cover-up; he was under investigation for intentionally recording and listening to a solicitor-client privileged conversation.

During his investigation of the complaint, Deputy Chief Mander came across something else which he believed was proof of the alleged cover up. A Continuation Report dated August 14, 2000 was introduced as an exhibit in the proceedings. The continuation report is a typed version of Constable Carr's report about what happened between 12:06 a.m. and 1:15 a.m. on July 30, 2000.

This document was poorly identified to the Board. The occurrence number was not filled in, the date of the investigation was not filled in, and the signature at the bottom did not appear to the Board to be Peter Carr's. Regardless, the Board will accept this document as a report completed by Constable Carr as neither party challenged its authenticity.

Constable Carr in this report stated that at 12:06 a-m. on July 30, 2000:

"0006 While on foot patrol in Mahone Bay in the ball field, voices were heard coming from the playground area of Jubilee Park. I ducked into the bushes when a male and female in there (sic) teens passed me and headed what I thought towards Clairmont. I proceeded to walk across the field when I noticed two parties sitting in the dug out closest to the playground- I approached them and turned on my flash light when the male stated "oh fuck" as I noticed the pills on the skateboard which was across his lap. I immediately believed the pills to possibly mescaline and told him he was under arrest for possession, I retrieved the pouch of pills, baggie of marijuana, lighter and a partial cigarette package. Dan Abriel was immediately read the Charter 10(b) Duty Counsel version. He replied "yes" he understood and "yes" he wished to speak to a lawyer. He was advised he would have the opportunity as soon as we returned to the station. The Police Warning was read and Dan replied "yes" he understood. I asked Dan if the pills contained mescaline; he replied "that is what I was told when I got it." Dan was searched and brought back to the PC on Clairmont and searched again before being cuffed and placed in the rear seat."

The Board points out that in this report, Constable Carr clearly and unequivocally states how he came to believe that the capsules in the possession of Dan Abriel were mescaline.

In the Continuation Report, there is no reference to Constable Carr having listened to the Videotape. Deputy Chief Mander made much of this, because Constable Carr did not state he had listened to the Video Tape in this report, he concluded this could only be an intentional cover up of his having breached solicitor-client privilege. Deputy Chief Mander therefore requested Sergeant Smith, in late October, to serve a second allegation against Constable Carr based on his

interpretation of the Continuation Report. This allegation in Form 8 is dated October 22, 2000 and reads as follows:

"Engaged in deceit by wilfully or negligently making a false, misleading or inaccurate written statement pertaining to the police officer's official duties, contrary to S. 5(I)(d)(ii) of the Nova Scotia Police Act."

Chief Crowhurst adopted in total Deputy Chief Mander's recommendations and requested Constable Carr's resignation, and in lieu of Constable Carr agreeing to resign, ordered his dismissal. The dismissal was confirmed by the Lunenburg Mahone Bay Board of Police Commissioners in accordance with Regulation 5(3)(a) and (b) which provide as follows:

- 5(3) Where an authority finds that a member of a police force other than the chief officer of the police force has committed a disciplinary default, the authority may
- (a) recommend to the board that the member be dismissed, unless the chief officer has authority to dismiss in accordance with a by-law made pursuant to subsection 14(3) of the Act, in which case the chief officer may dismiss the member;
  - (b) require the member to resign from the police force and where the member does not resign within seven days after being required to do so, recommend to the board that the member be dismissed, unless the chief officer has authority to dismiss in accordance with a by-law made pursuant to subsection 14(3) of the Act, in which case the chief officer may dismiss the member;
- Clause 5(3)(b) amended: O.I.C. 96-27, N.S. Reg, 8/96.**

The Board is concerned about the process followed in relation to the complaints. Constable Shannon and Sergeant Smith believed that Constable Carr had breached the Code of Discipline and Conduct. Neither of them reduced their complaint to writing. Constable Shannon and Sergeant Smith, based on their assessment of the information available to them, had in good faith come to believe that Constable Carr had intentionally videotaped and listened to a solicitor-client privileged conversation. Again, they should have reduced those concerns to writing and presented them to the Chief in this format. They did not do so.

The Chief did not reduce his concerns to writing either. There was no written allegation at this stage upon which a Form 8 Notice of Allegation could be based. In these proceedings, the Board will accept that when the Chief of Police is the person who is effectively making the allegation, it would be redundant. He would simply be providing a memorandum to himself. As the Authority who had to decide the merits of the complaint, Chief Crowhurst ought to have requested either Constable Shannon or Sergeant Smith to make their allegations in writing.

As regards the second allegation, this allegation was not formalized until October 22, 2000. In this case, the Form 8 was not signed by the Investigator, but by Sergeant Smith. Chief Crowhurst accepted Sergeant Smith signing the Form 8 as a satisfactory notice of allegation.

The Board concludes the facts in these proceedings are as follows:

- a. That Constable Carr should not have videotaped Dan Abriel in the interview room when he was there by himself.
- b. That Constable Carr did this taping in conjunction with Constable Foote who must also have believed this was permissible.
- c. That at the time of the taping, Constable Carr believed it was right and proper for him to videotape Dan Abriel in the room by himself and to videotape an empty room.
- d. That Constable Carr did not fully understand that he ought not to be surreptitiously taping the interview room because he had never been fully and properly trained in the use of the videotape.
- e. That Constable Carr came to believe Dan Abriel was in possession of mescaline for two reasons.
  - (i) that there had been a recent drug bust in the area of persons in possession of mescaline; and
  - (ii) because he inappropriately asked Dan Abriel as to what Dan Abriel had in his possession
- f. That it was improper for Constable Carr to ask Dan Abriel what was in his possession after he had been read his Charter Rights.
- g. That Constable Carr was insufficiently trained to understand fully the implications of a reading to the suspect his charter rights.
- h. Constable Carr did, out of curiosity, listen to some or all of the muffled voice of Dan Abriel speaking on a telephone to his lawyer.
- i. That Constable Carr did not try to use any evidence he may have picked up from the illegal videotape against Dan Abriel.
- j. That without significant enhancement of the videotape, there was no possibility of anything being of any evidentiary value.
- k. That Constable Shannon incorrectly concluded from his conversation with Constable Carr that Carr came to *believe* that the substance in which Dan Abriel was in possession was mescaline because of the videotape.

- l. That Constable Shannon was honest in his belief and ought to have reduced his concerns about Constable Carr to writing as required by *Police Act* Regulation 20(1).
- m. That Sergeant Smith also mistakenly concluded that Peter Carr came to believe the substance in the possession of Dan Abriel was mescaline from the videotape.
- n. That the investigation by Deputy Chief Mander became an investigation of the entire Abriel file, not the specific allegation of disciplinary default.
- o. That Deputy Chief Mander came to believe that Constable Carr tried to cover up his decision to listen to an inadvertent taping of a mostly inaudible solicitor-client privileged conversation.
- p. That Chief Crowhurst relied on Deputy Chief Mander's conclusions and therefore recommended the dismissal of Constable Peter Carr,

The Board found no disciplinary default had been proven in relation to the second Form 8. The complaint only made sense if one started with the assumption that Constable Carr conspired to effect a coverup. On the balance of probabilities, this was not proven.

The Board is of the opinion that the allegation contained in the first Form 8 had merit. The Board concluded that Constable Carr should not have left the video camera running. He should not have listened to the videotape once he discovered conversation between Abriel and his lawyer had been picked up and after he made this discovery he should have taken steps to address the issue with his supervisor or the Chief.

As Chief Crowhurst pointed out, Constable Carr should have discussed with senior officers in the department what should have been done about the situation. Constable Carr did not do so, and that is what led to his discipline and eventual dismissal. The Board agrees with Chief Crowhurst that the videotape should have been put in a sealed envelope and identified as containing solicitor client

privileged communication. However, Constable Carr's failure to follow that process is not evidence of wrongdoing. It is only evidence that Constable Carr did not understand the importance of ensuring that senior officers, the Crown and defence were apprised of the situation so they could determine how to deal with the videotape. Constable Carr concluded that nothing should be done with the tape at all. This decision created the perception of Constable Shannon, Sergeant Smith, Deputy Chief Mander and Chief Crowhurst that Constable Carr was intentionally covering up a wrongful act.

Constable Carr should be disciplined because he was surreptitiously operating a video camera in a circumstance where the videotape should not have been on, resulting in his inadvertently listening to part of a solicitor client privileged conversation.

The Board hereby makes the following determination and orders:

- (a) Constable Carr did breach S. 5(1)(a)(i.) by acting in a manner "likely to bring discredit on the reputation of the police force";
- (b) Constable Carr's dismissal is vacated;
- (c) Constable Carr is suspended without pay for a period of two weeks; and
- (d) Constable Carr shall be closely supervised for a minimum period of six months.

The Board is satisfied after hearing all of the evidence that Constable Carr had insufficient on the job training to properly appreciate the significance of some of the academic training he had received. The uncontroverted evidence was that Constable Carr received very limited on the job

supervision by a senior officer during his first year of employment. Constable Carr received extensive academic training at the Atlantic Police Institute in regards to the importance of charter rights and solicitor client privilege. Regardless, he had no hesitation in asking Dan Abriel, after he had read him his rights and after Dan Abriel indicated he wanted to speak to a lawyer, what the substance was in Dan Abriel's possession.

Issues of training and overall competence of an officer are not easily canvassed in the disciplinary default proceedings before the Police Review Board. In ordering that Constable Carr be subject to a period of close supervision, the Board states that Constable Carr clearly needs a period whereby he works with a more senior officer until that senior officer is satisfied that Constable Carr has translated his academic training and understanding of the law in police practice with his actions as a police officer. This should be a period of not less than six months.

The Board recognizes that the situation is made difficult because the Lunenburg Mahone Bay Police Service is being disbanded in favour of the RCMP. The RCMP will make its own assessment as to the fitness of Constable Carr. This Board however heard no evidence by which it would believe that Constable Carr would not become a good police officer with a period of close supervision.

The Board acknowledges that solicitor David Fisher argued that the Board was deprived of jurisdiction because Deputy Chief Mander's investigation was not completed within 60 days of the filing of the first complaint as required by the Regulations. The Board finds as fact that the

complaint was filed when Deputy Chief Mander completed and served the Form 8. The investigation was completed on October 10, 2000 as was within 60 days of the serving of the Form 8 as required by the Regulations.

**DATED** at Halifax, Nova Scotia, this            day of March, 2001.

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**BRIAN CREIGHTON**  
Chairman

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**LINDA FRASER**  
Member

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**THERESA MEUSE**  
Member

Distribution:

Constable Peter Carr - Member - Lunenburg/Mahone Bay Police Department  
Mr. David Fisher - Solicitor for the named officer  
Chief Brent Crowhurst - Lunenburg/Mahone Bay Police Department  
Mr. David Bright - Solicitor on behalf of Chief Crowhurst & the Town  
D/Chief Mark Mander - Kentville Police Department  
Mr. Brian Creighton - Chair NS Police Review Board  
Ms. Theresa Meuse - Member, NS Police Review Board  
Ms. Linda Fraser - Member, NS Police Review Board  
Mr. Jim Beaver - Executive Director Police & Public Safety

**NSPRB-00-0130**

**IN THE MATTER OF:**

*The Police Act*, R.S.N.S. 1989,  
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**AND IN THE MATTER OF:**

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**CONSTABLE PETER CARR**,  
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**D E C I S I O N**

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Before:

Brian Creighton - Chair  
Linda Fraser - Member  
Theresa Meuse - Member