

DECISION

File No. 02-0047

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 Form 13 Notice of Review filed by **Ron R. Corbin**, requesting a review by the Nova Scotia Police Review Board of the November 22, 2002 decision of Chief K.C. MacLean of the Truro Police Service

BEFORE: Ms. Marion Ferguson, Chair
Mr. Lester Jesudason, Alternate Chair
Dr. Charles Schafer, Member

COUNSEL: Mr. Ronald Corbin on behalf of Ms. Jennifer Corbin
Mr. John Rafferty on behalf of Chief K.C. MacLean
Mr. David Fisher on behalf of Corporal Kelly Moore-Reid, Constable Graham Purvis, Constable Rick Hickox, and Constable James Browne of the Truro Police Service

HEARING DATE: June 26, 27, 2003

PLACE: Truro Town Council Chambers and the MacDonald Room at the Glengarry Motel in Truro, Nova Scotia

DECISION DATE: Written Decision: October 29th, 2003

This matter came before the Nova Scotia Police Review Board by way of a December 6, 2002 Form 13 Notice of Review filed by Mr. Ron R. Corbin, on behalf of his daughter, Ms. Jennifer Corbin.

Mr. Corbin is appealing the November 22, 2002 decision of Truro Police Chief Kenneth MacLean (Form 11 Disposition of Public Complaint) that found Corporal Kelly Moore-Reid, Constable Graham Purvis and Constable Rick Hickox of the Truro Police Service had not breached section 5(1)(g)(iii) of the *Nova Scotia Police Act Regulations*, in an April 5, 2002 incident involving Ms. Jennifer Corbin.

Section 5(1)(g)(iii) states:

Part 2-CODE OF CONDUCT AND DISCIPLINE

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

(g) abuses authority by

(iii) exercising authority as a police officer when it is unlawful to do so;

At the outset of this decision, the Review Board notes the following:

1. Chief K.C. MacLean does not name then Cadet Constable James Browne in his November 22, 2003 decision but like the other respondent officers, Constable Browne was served with a Notice of Allegation (Form 8 dated June 28, 2002), is named by the investigator in the Notice of Completion of Investigation (Form 9 dated September 27, 2002) and by the

Appellant Mr. Corbin in his Notice of Review (Form 13 dated December 6, 2000).

For the purpose of this appeal, the Review Board finds that Cadet Constable Browne is a respondent.

2. The Notice of Allegation for each of the four officers, charges a breach of section 5(1)(a)(i) of the *Nova Scotia Police Act Regulations* which states:

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,

As noted above, Mr. Corbin's Notice of Review (Form 13 dated December 2, 2002) seeks a review of Chief MacLean's November 22, 2002 decision which refers to an alleged contravention of *section 5(1)(g)(iii)* of the *Police Act Regulations*.

For the purpose of this hearing, the Review Board finds that is the decision presently before the panel.

3. The original complaint was made by Mr. Corbin on behalf of his daughter, Ms. Jennifer

Corbin, as outlined in his April 15, 2002 letter to the Nova Scotia Police Commission.

Section 9(1) *Police Act Regulations* authorizes a public complaint being made by a third party:

9 (1) Subject to subsection (2), a member of the public may file a complaint despite the occurrence which gave rise to the complaint having personally affected a member of the public other than the complainant. (emphasis added)

(2) Except where the member of the public personally affected by the occurrence which gave rise to the complaint is not competent to give consent, a complaint filed pursuant to subsection (1) will not be accepted for filing unless the member of the public personally affected by the occurrence which gave rise to the complaint consents to the processing of the complaint under these regulations by endorsing the complaint in writing at the time the complaint is submitted for filing. (emphasis added)

4. Ms. Corbin subsequently complied with section 9(2) by endorsing Complaint Form 5 dated May 3, 2002 against “six unknown members” of the Truro Police Service.

This appeal was heard by the Review Board by hearing *de novo* on June 26 and 27, 2003, at Truro.

No issues of jurisdiction were raised by the parties and the Review Board finds that it has jurisdiction to hear this matter pursuant to section 29 of the *Police Act R.S.N.S 348*.

FACTUAL BACKGROUND

At approximately 10 p.m. on April 5 2002, Corporal Kelly Moore-Reid and her partner, Constable Rick Hickox, responded to a noise complaint at an apartment building at 8 Willow Lane, Truro. The Police Occurrence Inquiry form says that the call was made by building superintendent Mr. Noel Gagnon, who advised the dispatcher that a party in apartment number 12 had “gotten out of hand” and further, that damage to his car the previous evening “was related to the party as well.”

After arriving on scene, the two officers were soon joined by Constable Graham Purvis and Cadet Constable James Browne, then in training with the Truro Police Service. After a brief conversation with Mr. Gagnon and his partner and fellow superintendent, Ms. Corinne Ring, the four officers, with both superintendents, proceeded to apartment 12 on the third floor of the building. Hearing noise only from apartment 11, Corporal Moore-Reid knocked on that door, was invited in and asked the people inside to turn down the music, which they did.

Back out in the hallway, Corporal Moore-Reid was then approached by Ms. Ring who insisted that the Corporal speak with the tenant in apartment 12, Ms. Jennifer Corbin. The Corporal knocked on that door but received no reply. Ms. Ring then proceeded to kick in the door of apartment 12 with her foot.

Led by Corporal Moore-Reid, all four officers entered apartment 12 and found a male person in the living room, who appeared to be unconscious. The officers investigated the premises and

found people, some of whom were underage. After approximately ten minutes, the officers left apartment 12. No charges were laid.

Issue 1

Did Corporal Kelly Moore- Reid, Constable Graham Purvis, Constable Rick Hickox and then Cadet Constable James Browne, engage in an abuse of authority as set out in section 5(1)(g)(iii) of the *Nova Scotia Police Act Regulations*, in relation to Ms. Jennifer Corbin, the tenant of apartment 12?

Evidence

On April 5, 2002, Ms. Jennifer Corbin had invited a few friends to her home, apartment number 12 at 8 Willow Lane, Truro, for an early celebration of her 18th birthday. She had arranged for her infant daughter to stay at her parents' home for the night.

Ms. Corbin told the Review Board that by 8:30 p.m. that evening, there were approximately "seven or eight people" in her apartment enjoying "music and some dancing." She described her apartment as being a two bedroom unit with bath, living room with adjoining kitchen and small pantry.

Around 9:05 p.m. Ms Corbin, her friends, siblings Lindsay and Brad Barton and Peter Lawless decided to go for a drive. Ms. Corbin told the Review Board that as she was going downstairs, the remaining guests were leaving her place and “going into Kerry West’s apartment,” number 11 across the hall.

An hour later, around 10:10 p.m., Ms. Corbin and her friends returned to 8 Willow Lane at the same time a Truro Police Department van was pulling into the parking lot. It was Ms. Corbin’s evidence that she did not realize that the police were there about her apartment.

After ringing Lindsay Barton’s mother, Ms. Florence Barton’s apartment, to let them in because they did not have their keys, the “Corbin” group proceeded upstairs to apartment 12. En route, Ms. Corbin heard someone, she was unsure who, call out “pigs!”

When the group got to the third floor there was “loud, noisy music” playing and according to Ms. Corbin, people exiting apartment 11, now followed her group into apartment 12, which she said was “unlocked.” This group of “now 5 or 6” moved through Ms. Corbin’s apartment, turning on no lights as they went and entered her bedroom at the back of the apartment, where they began “talking quietly.”

In cross-examination, Ms. Corbin said that after the group entered her home, as was her custom, she put both the bolt lock and the chain lock on the apartment door. She “always” does this “whether day or night,” on account of security concerns for her and her daughter. Apparently, during

her present tenancy her apartment had been broken into on “three separate occasions” and she gave her opinion, uncorroborated before the Review Board, that “the superintendent” had been involved.

According to Ms. Corbin, at one time she, Mr. Gagnon and Ms. Ring had been “friendly,” but the relationship had deteriorated. “Every time” there was property damage at the building, the superintendents blamed her and among the incidents she related to the Review Board was the recent vandalism of the superintendent’s car, with which she denied any involvement.

In her mind this animosity was due to her personal advocacy for 8 Willow Lane tenants and tenants “in the other two buildings”; plus the fact that she had filed “numerous complaints” against the landlord with the Residential Tenancies Board.

While she and her friends sat in her darkened bedroom, Ms. Corbin said she heard “yelling” and assuming it was “the super Corinne” for whom, “I didn’t have to open the door,” she chose not to reply. The next thing she heard was a “bang” as “the door smashed up against the wall.” She next sees lights and then a police officer, who directs everyone to come out of the bedroom. In the kitchen, she meets the “lady cop,” Corporal Moore-Reid, who began asking her “for some information.”

It was Ms. Corbin’s evidence that during this conversation in the kitchen, Corporal Moore-Reid did “pretty much all of the talking”; specifically, “the lady cop degraded me and my baby,”

saying, "welfare was going to hear about it, " that "her taxes should not go to supporting me"and questioning whether Ms. Corbin would like to have "sole custody" of her daughter.

While this conversation continued, it was Ms. Corbin's evidence that the other officers went into her child's room, opened her fridge and cupboards in the apartment and although there were people of legal age at the party, "dumped out" any open liquor. While she acknowledged that some of her guests were underage, "no one underage was drinking" and in her words, as to drugs, "I don't allow it."

It was also at this moment that Ms. Corbin first realized that Mr. Claude Wood, who had been a guest at her party earlier that evening, was still in her apartment. While at one point in her evidence she recalled seeing everyone exit her apartment "except Claude" when she left for her drive around 9:00 p:m, she also admitted that she did not know that if, during the time she was out, Mr Wood had gone over to apartment 11 as some of her guests had done.

As well, since the lights remained out when the "Corbin" group re-entered apartment 12 around 10:00 p.m., Ms. Corbin had not noticed Mr. Wood when she and her friends walked by the living room and into her bedroom. It was her evidence that even after the police directed her group out of her bedroom, through the living room and into the kitchen to talk to Corporal Moore-Reid, she "didn't see Claude there....I didn't even notice him there." Even with the kitchen light on, she told

the panel she did not notice Mr. Wood “until Corporal Moore-Reid told Brad Barton to take Claude;” “that was the first time I knew he was there.”

Ms. Corbin told the panel that she did not know how drunk Mr. Wood, whom she did not know well, was that night.

After the police left and she had a chance to examine her front door, which was described as being a “hollow core wooden door,” Ms. Corbin noticed it had been damaged. While the door frame “was not busted,” the kicking in of the door had resulted in the two nails that held the chain lock in place, being “completely pulled out”, a broken knob and “lopsided door.” Ms. Corbin told the panel that, in order to close her door, she had to lift (*it*) up by the handle” and “slam it shut.”

Repairs were apparently never made.

Ms. Florence Barton, mother of Lindsay and Brad Barton, resided in a basement apartment at 8 Willow Lane.

Ms. Barton confirmed that when her son brought Mr. Wood, whom she recalled seeing “like that before,” into her home that night to “sleep it off,” he “wasn’t in good condition.” She also remembered her daughter Lindsay telling her after that night, “Jennifer couldn’t lock her door” and that the next day, Ms. Corbin had asked Ms. Florence Barton to push her door “because it was stuck.”

Ms.Lindsay Barton, a friend of Ms.Corbin's, gave evidence.

She told the Review Board that she was with Ms. Corbin throughout the evening of April 5, 2002 and essentially confirmed her friend's recollection of the night's events. Like Ms. Corbin, Ms Barton did not realize that Mr. Wood was in apartment 12 until the lights came on. When, during Ms. Corbin's conversation with Corporal Moore-Reid, she realized Mr. Wood was still in the apartment, she "thought (*he*) was in a corner in the living room," but she also admitted to the panel that she was "not really sure." Like her mother, she thought Mr. Wood "drinks too much."

Corporal Moore-Reid gave evidence before the Review Board.

An officer with the Truro Police Service since 1996, Corporal Moore-Reid testified that as the highest ranking officer that night, she was in charge on the 8 Willow Lane call. She and Constable Hickox arrived first in the police van, shortly followed by Constable Purvis and Cadet Constable Browne in a marked police car with no flashing lights or siren engaged. The three officers who gave evidence, Corporal Moore-Reid, Constable Purvis and Constable Hickox, all confirmed that it is not unusual for two police units to respond to noise complaint calls, as they often involve "lots of people."

While Corporal Moore-Reid could not recall having been specifically to 8 Willow Lane before, Willow Lane itself was a “very familiar part of our patrol” and she described it as being in an older “residential, business area of Truro” with “older warehouses” and “an AA Meeting Centre.” Responding to the panel’s questions, she agreed that it was not a “high class apartment building,” there were “a lot of single moms...lots of children..not well kept at all.”

As soon as Corporal Moore-Reid and Constable Hickox arrived, they were met by building superintendents Mr.Noel Gagnon and Ms. Corinne Ring, who, according to the Corporal, were “upset” and “went off-very vocal” about the noise complaint and the previous night’s damage to their car. Corporal Moore-Reid told them she would deal with “one thing at a time” and that as the car damage was from the night before, “they couldn’t prove to me that Ms. Corbin had done it.”

All four officers and the two superintendents then proceeded up to the third floor where they found apartment 12 quiet, but noise could be heard coming from apartment 11. Consequently, Corporal Moore-Reid concluded that apartment 11 was actually the source of the superintendents’ concern.

Knocking on that door and announcing “Truro Police,” she entered the apartment, asking those inside to turn down the music. While there was liquor on the premises, in the Corporal’s opinion only one person appeared to be possibly underage and she told the police her identification was across the hall in apartment 12. The people inside apartment 11 complied with the Corporal’s

request to turn down the music and so the officers left. No arrests were made, nor was any liquor seized.

In Corporal Moore-Reid's words, "I thought we had dealt with the party and the noise complaint" and that as far as she, the officer in charge was concerned the call to 8 Willow Lane was over. However, when Corporal Moore-Reid returned to the hallway, she found superintendent Ms. Ring, "mad at me" about the noise complaint involving apartment 12, which the superintendent said was the reason for the call to the police in the first place.

Admittedly, as an effort to placate Ms. Ring, Corporal Moore-Reid decided to knock on apartment 12, advising, "Truro Police, please open the door, I want to speak to you." At this point, getting no response, although she could hear movement from inside the apartment that sounded "as if it were moving away" from her, Corporal Moore-Reid told Ms. Ring, "there was nothing we could do," and then prepared to leave the scene.

At this, according to both Corporal Moore-Reid and Constable Hickox, Ms. Ring, whom some of the witnesses described as being a "large" and "powerful" woman, became "very upset and vocal" and saying something to the effect, "I will have to do this," proceeded to kick Ms. Corbin's door "right in." Corporal Moore-Reid said this action on the superintendent's part came as a "real surprise" to her as she had "never seen a woman do this before," and she agreed there was "no reason to kick the door in."

It was Corporal Moore-Reid's opinion that Ms. Ring's behaviour was because she was "ticked off" at the police response to her allegations about apartment 12. The Corporal agreed with the characterization of the behaviour as a "temper tantrum."

Now faced with a non-secured apartment, it was Corporal Moore-Reid's evidence that she felt she could not leave the scene. She told the panel that the door of apartment 12 opened to the right and that at this point she was still in the hallway, standing by the hinge area of the door with her flashlight in her left hand and her right hand on her gun. Starting from her right shoulder and swinging the "powerful stringer streamline flashlight" to the left around the darkened interior of the apartment, her beam found an individual "whose chin was on his chest."

Getting no response from the exceptional brightness of the light that was being flashed across his face or to her calling out "Truro Police," the Corporal then noticed a "wetness on his chin." Concluding the man "might be dead," she entered Ms. Corbin's home and began checking for wounds and a pulse. In an effort to bring him around, she put water on his face.

Corporal Moore-Reid advised the Review Board that "later on" she "found out" there was a four foot wall at the entry to the apartment, which she agreed would have interfered with her ability to see Mr. Wood from her position at the apartment's doorway. It was her testimony that she believed the chair Mr. Wood was sitting in, when discovered by the police was further out into the

living room, away from the wall and “closer to the coffee table,” thus permitting her to see him as she described. The officer maintained throughout her evidence that, “I believe that I saw him before going into that apartment.”

While the Corporal attended to Mr. Wood, the other three officers sought to check out and secure the rest of the apartment. According to Corporal Moore-Reid, “as far as I knew they cleared the apartment... that is what they are supposed to do; to search for bodies that could cause a threat....to make sure that all safe.”

Both she, and later Constables Purvis and Hickox in their evidence, described the manner of the entry into apartment 12, with Corporal Moore-Reid being first in, followed next by Constable Hickox, Constable Purvis and finally Cadet Constable Browne. As Corporal Moore-Reid said “everyone had a job” to do and while she concentrated on the unconscious man in the chair, Constables Purvis and Hickox told the panel that on entering apartment 12, each of them alternated going to the left and to the right in the apartment, being alert to “any potential risk”to them or their fellow officers. Cadet Constable Browne apparently entered last.

The panel was also advised that as a member of Corrections Services Canada ‘s Emergency response team, Corporal Moore-Reid is called in to respond to hostage situations and prison riots and she explained that this specialized tactical training is to “ensure the safety of police officers and the preservation of life.”

Once people were gathered in the apartment's livingroom/kitchen area, the Corporal speaks with the tenant of apartment 12, Ms. Jennifer Corbin.

In this conversation, the Corporal admitted to being "firm with Jennifer," asking her several questions about her daughter's paternity and pointing out the risk Mr. Wood, in his drunken condition posed to her and her daughter. Mr. Wood had apparently vomited, causing potential sanitary concerns in the Corporal's view, for a crawling baby. Moreover, she submitted to the panel that if Mr. Wood had died that night, that would have been obviously disruptive for the family. Corporal Moore-Reid stated that she "was glad" that Ms. Corbin's child was not there to be upset by the sight of police officers in her home.

She disputed Ms. Corbin's version of their conversation, maintaining that she would "never degrade someone for being on social assistance" and that as a mother herself, she is appreciative of the particular challenges that single mothers like Ms. Corbin face. She told the panel it is "usual" in calls involving children, to obtain information such as the child's date of birth and parents' names, which is then recorded in police computer files.

Although Corporal Moore-Reid testified she did not write the Police/Follow Occurrence Report for the April 5 call, which ends with "Concluded/Sgt MacNeil," the following is noted:

"SOCAIL (*sic*) SERVICES WILL BE CALLED ON MONDAY TO ADVISE THEM OF THE SITUATION."

Corporal Moore-Reid said it was her “common practice” to make such referrals to Social Services and that in this particular case, she felt a referral was “justified” because “Claude could have died,” as he was “in rough shape.” As a consequence of the police response to apartment 12, there was no arrest, no search, and it was her recollection that the police could not have been in apartment 12 for longer than “five to seven minutes”.

In response to questions from the panel as to why the superintendent Ms. Ring was not charged for her actions that night, the Corporal answered that while she later read “somewhere” that “the superintendent” had entered apartment 12, she herself did not witness the entry and further, that at the precise moment of the event she did not think Ms. Ring had shown the necessary criminal intent to sustain any charge under the Criminal Code. However, she acknowledged that Ms. Ring herself asked that night if she would be charged by the police with break and enter for her actions.

In Corporal Moore-Reid’s words, it was only later when was “all this” came up, that a Staff Sergeant had suggested damage to property as a possible charge. However, in her view, the complicating factor of colour of right issues and landlord tenant law, as the superintendent was presumably acting on behalf of the owner/landlord, prevented her from following up on that suggestion.

It is the Review Board's understanding that no charges were ever laid against Ms. Ring for her actions that night.

Constable Graham Purvis gave evidence.

He testified that on that particular shift he was working with Cadet Constable Browne. Arriving on scene, Constable Purvis did not engage in conversation with the superintendents and knew nothing of ongoing problems between them and Ms. Corbin. He confirmed Corporal Moore-Reid's investigation of the apartment 11 noise complaint, agreeing that Ms. Ring "wasn't happy" when the Corporal told her there was "nothing they could do" about apartment 12.

At the time of Ms. Ring's assault on Ms. Corbin's apartment, he "wasn't focused on the door" and the "next thing I knew the door was opened." From his view behind Corporal Moore-Reid, she was "basically in the door casing," as "common sense mandates that police don't jump in." He told the Review Board that "when the Corporal swept the room with her flashlight, I did see a male party slouched in a chair." The Review Board notes that Constable Purvis is considerably taller than Corporal Moore-Reid.

The Constable confirmed that once inside the apartment, Mr. Wood "appeared intoxicated" and that Corporal Moore-Reid "worked on" getting a response from him. Constable Purvis denied searching any cupboards in the apartment or pouring out any liquor. It was his evidence that he had

no trouble seeing over Corporal Moore-Reid from the door entry but agreed that if, as submitted by Ms. Corbin, Mr. Wood was in a “deep corner” of the living room, he would not have been visible to the officers at the front door.

Constable Hickox gave evidence.

Like his two fellow officers, he confirmed that Ms. Ring was “unhappy with our lack of response” concerning apartment 12. He described her as being “enraged” at this but said that once Ms. Ring had kicked the door in, her anger appeared “to subside.” It was his evidence that Corporal Moore-Reid tried “at least three times” to make contact with the occupant of apartment 12.

Constable Hickox said he was unable to see directly into apartment 12 as the Corporal was “obstructing my view” but he “believed her feet were in the hallway.” As the officer who directed the people out of Ms. Corbin’s bedroom, he told the panel that while he was exiting the bedroom and crossing into the living room, he noticed Mr. Wood and observed “some vomit.” As testified by Corporal Moore-Reid and Constable Purvis, who both denied dumping out any “liquor,” or searching cupboards, Constable Hickox denied “dumping out” any “beer,” searching cupboards or seeing anyone “dump alcoholic beverages.”

Cadet Constable Browne was not called to give evidence.

DECISIONS/REASONS

The four respondent police officers are alleged to have committed the disciplinary default of abuse of authority as defined in section 5(1)(g)(iii) of the *Police Act Regulations* by “exercising authority as a police officer when it is unlawful to do so.”

As discussed by Paul Ceysens, in *Legal Aspects of Policing (volume 2: Earls court Looseleaf Edition to January 2003)* at page 6-84:

This discipline offence of abuse of authority is referred to as “unlawful or unnecessary exercise of authority” in some jurisdictions. It consists principally of two issues: unlawful and unnecessary arrest; and unnecessary force. Some disciplinary schemes include disrespectful behaviour and similar conduct as a further category of abuse of authority. In some jurisdictions, such as BC, the Code of Professional Conduct provides that a police officer commits abuse of authority where he harasses, humiliates or retaliates against a person who made a report about the conduct of an officer.

The Review Board has considered the alleged disciplinary default of abuse of authority in the context of police action or in-action on the night of April 5, 2002 in three parts:

- (1) *the decision to enter Ms. Corbin’s home;*
- (2) *police conduct while inside Ms. Corbin’s home;*
- (3) *the actions police did or did not take as a consequence of the night’s events;*

- (1) *the decision to enter Ms. Corbin’s home;***

Preliminary to a discussion of the police decision to enter Ms. Corbin's home, the following questions of fact need to be addressed:

- (i) *who kicked in the door of Ms. Corbin's apartment?*
- (ii) *was the bolt lock engaged by Ms. Corbin when she entered her home around 10:00 p.m.?*
- (iii) *was the bolt lock opened before the door was kicked in and if so by whom?*
- (iv) *where was Mr. Wood seated when Corporal Moore-Reid made the decision to enter apartment 12?*

(i) *who kicked in the door of Ms. Corbin's apartment?*

Corporal Moore-Reid and Constable Hickox testified they both saw Ms. Corinne Ring use her foot to kick in the door of Ms. Corbin's apartment. While Constable Purvis was not "focused" on the door at that precise moment, he confirmed the agitated state of Ms. Ring prior to the event, and told the panel the "next thing" he knew the door was opened. Constable Purvis offered no other possibility as to who may have kicked in the door.

Neither Mr. Gagnon or Ms. Ring appeared before the Review Board to testify.

The panel accepts the evidence of Corporal Moore-Reid and Constable Hickox and finds that Ms. Ring kicked in the door to Ms. Corbin's home.

(ii) *was the bolt lock engaged?*

The Review Board found Ms. Corbin to be a believable witness. While she showed emotion during her testimony and some resentment for what she had experienced that night, the panel was given no impression that she was adding to her evidence to present a more compelling case. Her evidence was both forthright and articulate.

As well, the panel finds that pre-existing problems with the superintendents had made Ms. Corbin particularly cautious regarding her family's security and accepts her evidence that it was her normal habit to engage both the bolt and chain locks on her apartment door "whether day or night." This difficult relationship with the superintendents, especially Ms. Ring, was confirmed by Corporal Moore-Reid, when she testified that in her opinion, the superintendents were placing "blame on Jennifer out of pure dislike."

Ms. Corbin testified that her door frame was not damaged as might be expected if the door had been forced open with the bolt engaged.

The Review Board accepts this evidence and finds that Ms. Corbin engaged both the bolt lock and the chain lock when she re-entered her apartment around 10:00 p.m. on the night giving rise to this complaint.

(iii) was the bolt lock opened before the door was kicked in and if so by whom?

The Review Board notes the undated Police Action/Follow up Occurrence Report, (occurrence number 2188), the complete accuracy of which was later disputed by Corporal Moore-Reid, as she was not the author, states:

UPON OUR ARRIVAL JENNIFER WOLD (sic) NOT ANSWER THE DOOR THE LAND LORD OPENED THE DOOR AND WE OBSERVED A CHAIN LATCHED ON THE IN SIDE OF THE DOOR THE LANDLORD THEN KICKED THE DOOR IN HE WAS EXTREMELY UPSET ABOUT THE PARTY HE HAS BEEN HAVING A NUMBER OF PROBLEMS WITH HER. (sic)

Corporal Moore-Reid, Constable Purvis and Constable Hickox testified they did not witness Ms. Corbin's door being opened with a key before the door was forced open by Ms. Ring. The author of this Occurrence Report was not called to give evidence.

Accepting Ms. Corbin's evidence that she engaged the bolt lock when she re-entered the apartment and given her description of the state of the door frame after the assault by Ms. Ring, the Review Board finds that the bolt lock was opened prior to Ms. Ring's actions. However, in the absence of direct evidence on this point, the Review Board is unable to determine who unlocked the door prior to the break in.

(iv) where was Mr. Wood seated when Corporal Moore-Reid made the decision to enter apartment 12?

As noted previously, before Ms. Corbin left for her drive sometime around 9:00 p.m., in her words Mr. Wood was “alive and kicking,” seated in a chair in the far corner of her living room. A person seated in that particular chair, she maintained, would not have been visible to Corporal Moore-Reid from her position outside in the hallway because of the four foot wall at the apartment entrance.

It was the appellant’s submission that for the flashlight beam to have discovered Mr. Wood, the police would have had to be inside apartment 12 proper. Consequently, Mr. Corbin argued the officers could not have had, as a justification for their entry into the Corbin home, either an observation of Mr. Wood’s condition or safety apprehensions that might have arisen from same.

Both Corporal Moore-Reid and Constable Purvis agreed with Mr. Corbin’s argument; namely that if Mr. Wood were located where Ms. Corbin said he was, neither officer would have been able to see him before entering.

However, while Ms. Corbin recalled where Mr. Wood was when she left around 9:00 p.m. and maintained that he was in the same position when she next saw him, that is during the kitchen conversation with Corporal Moore-Reid, she conceded that she could not be sure that if, while she was out driving between 9:00 p.m. and 10:00 p.m., Mr. Wood had not gone over to apartment 12 as some of her guests had done.

Like Ms. Corbin, Ms. Lindsay Barton did not notice Mr. Wood until Ms. Corbin did and while she thought that at that moment Mr. Wood was in the chair, deep in the corner of the living room, she candidly admitted that she was not certain.

As recounted above, Corporal Moore-Reid “believes” she saw Mr. Wood before she entered apartment 12 and she is supported in this by Corporal Purvis, who testifies he saw Mr. Wood before they went in. Constable Hickox, unlike Ms. Corbin and Ms. Barton did notice Mr. Wood when he was exiting the bedroom and directing everyone to assemble in the living room, giving credence to Corporal Moore-Reid’s theory that Mr. Wood was actually further out into the living room itself and therefore, visible to the police prior to entry.

The Review Board finds that the evidence of the three officers is equally compelling and on balance accepts that Mr. Wood may have been visible to Corporal Moore-Reid prior to her decision to enter Ms. Corkum’s apartment.

The burden of proving the visibility of Mr. Wood from the doorway vantage point of Corporal Moore-Reid, rests with Ms. Corbin . On this point, the Review Board finds that the burden of establishing Mr. Wood’s location in the living room has not been met.

With these findings of fact made, the Review Board returns to issue one:

(1) *the decision to enter Ms. Corbin's home;*

The law recognizes two lawful justifications for entering upon property:

- (i) *the lawful occupier consents to the entry either by expressed or implied licence; or*
- (ii) *there is a licence given by law - for example, protection of life and property; (Legal Aspects of Policing supra at pages 3-24 and 3-31)*

The Review Board has considered each of these in the context of this complaint.

There is no question that based on the facts as presented, Ms. Jennifer Corbin did not consent to the police entering her home on April 5th, either expressly or by implication. While she admitted that she heard the knocking at her front door and “yelling,” she assumed it was Ms. Ring with whom she was having problems and so she chose, as was her right, not to answer.

Justification number one then is a non-starter.

Justification number two, licence given by law, is not so straight forward.

Mr. Corbin argued that the police had no legal authority to enter his daughter's home that night. Although a layperson, he had done considerable legal research on the topic and directed the

panel to a number of leading Canadian criminal cases in support of his view that the police decision to enter Ms. Corbin's apartment constituted an illegal entry.

It is clearly recognized that police officers have a common law duty to "preserve life, protect against serious injury and protect property," and consequently, a police officer who enters a property for this reason will not be held liable in trespass. (*Legal Aspects of Policing supra* at page 2-27; *R.v. Dedman 1985 2, S. C.R. 2*).

Certainly there was no legal authority for police to enter the premises of apartment 12 before the unexpected action of Ms. Ring. No crime had been committed nor were the police concerned about any possible threat or illegal activity inside Ms. Corbin's home.

However, once the beam of Corporal Moore-Reid's flashlight finds Mr. Wood sitting, apparently unconscious, in a chair in Ms. Corbin's living room, the dynamics of the situation are significantly changed.

The Review Board accepts that at this moment, Corporal Moore-Reid, now thinking the worst as to Mr. Wood's condition, automatically engages her professional concern and responsibility for his safety and the potential safety of others who may be inside. That concern, to "preserve life and protect against serious injury," now rightly encompasses Mr. Wood, other possible victims and Corporal Moore-Reid's fellow officers and the panel finds, becomes the prime motivator for significant aspects of the officer's subsequent actions.

Consequently, the Review Board finds that upon Corporal Moore-Reid's flashlight discovering Mr. Wood, unconscious in the darkened apartment with a "wetness on his chin" and coupled with the officer's inability to arouse any response from him with her flash light or her voice, at this point she was justified in entering the apartment to go to his aid.

It is also important to acknowledge that the Corporal's decision took place against a backdrop that included the unexpected action of Ms. Ring, which "surprised" police, the immediate reality of an unsecured apartment, the fact that when the Corporal knocked on the door and announced herself to those inside she heard voices inside apartment 12 "moving away from the door," and finally and not insignificantly, the speed with which these events occurred.

The importance of the police duty to protect life warranted the entry into Ms. Corbin's apartment to ascertain Mr. Wood's health and safety and the Review Board therefore finds that in the environment of that call, at that moment, Corporal Moore-Reid exercised her best judgment and finds her reaction in the circumstances reasonable.

Legal justification for the entry into apartment 12 has been established.

(2) *police conduct while inside Ms. Corbin's apartment;*

(a) *tactical manoeuvres on entering the apartment;*

In his submission, Mr. Corbin was critical of both police conduct and attitude when inside apartment 12. In his view, police conduct that night had violated his daughter's reasonable expectation of privacy and in particular, he was critical of the employed police security tactics which he described as "inappropriate." Mr. Corbin likened the police entry to a "herd of elephants" and maintained it was "unnecessary" in the circumstances.

The Review Board accepts that to the perception of Ms. Corbin and her friends in the bedroom, the banging and yelling at the front door, the flashlights in the darkened apartment and the sounds of unidentified persons coming into the home were frightening. Being directed out of her bed room and into her kitchen and then being questioned by a law enforcement officer for no obvious reason, could only have compounded an understandable sense of intimidation.

When, as in all three officers' testimony, issues of safety and protection are the watchwords, the protocols as described for entering apartment 12 that night, with each officer having a particular job to do to secure the premises for all, including their fellow officers, appear to have been reasonable and not out of the ordinary for the circumstances as described.

Therefore, separating issues of realized police access to the premises, from the security measures applied by the police once in, the Review Board finds that the police security measures themselves were not inappropriate in the circumstances.

(b) allegation that police opened Ms. Corbin's fridge and poured out open liquor;

According to Ms. Corbin the police "simply asked who was over 19" and proceeded to dump out "anything that was opened," and at the time "I didn't know what to think; I thought what am I gonna do now?"

Weighing of evidence and making findings of fact, which is the responsibility of an administrative tribunal, requires an understanding and close examination of the burden and degree of proof placed on the complainant in making his case. The *Police Act Regulation section 28G* provides that "at a hearing of the Review Board the burden of proof shall be on the balance of probabilities."

However, in certain instances, in particular in disciplinary cases such as this, where the charges and potential consequences of the findings are serious, clear and convincing evidence may be the required civil standard of proof.

Legal scholar Sara Blake elaborates on this issue In *Administrative Law in Canada (second edition)* (Butterworths Canada Ltd. Toronto 1997) writing at page 69:

If, at the end of a tribunal hearing, on all the credible evidence, it has been proven that the events alleged probably occurred, the case has been proven. Even in disciplinary proceedings this standard of proof prevails. (Milstein v. College of Pharmacy (Ont.) (No.2)(1978), 87 D.

L.R. (3d)392 However, the degree of proof required to establish a fact by a balance of probabilities is not the same in every case. The law recognizes degrees of probability.

In all cases, before reaching a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred, and whether the tribunal is so satisfied will depend on the totality of the circumstances including the nature and consequences of the facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding. (R. v. Peckham (1994), 19 O.R. (3d) 766at 774 C.A.

The Review Board found Ms. Corbin, supported by Ms. Barton's evidence as credible as it found the evidence of the three Truro Police officer on this point. Each officer denied witnessing any officer open any cupboard, fridge or pour out open liquor. Ms. Corbin and Ms. Barton both credibly testified that they witnessed one or more police doing so.

In assessing this evidence, the Review Board has noted that none of the police officers alleged Ms. Corbin or any of her friends, aside from Mr. Wood, were intoxicated or uncooperative with police direction that night. While Ms. Corbin also admitted that there were underage people at her party, none of them were drinking. The police, by allowing certain individuals who were of legal drinking age to take unopened alcohol with them as they left the apartment appears to confirm this, as this would not likely have been permitted if the police had serious concerns about the sobriety of those individuals.

The Review Board also notes that identification of the officer or officers involved in the alleged draining of the liquor was not established by the evidence of either Ms. Corbin or Ms. Barton and consequently, the panel has looked to other means of attempting to resolve this conflict in the evidence.

Cadet Constable Browne did not testify before the panel.

While accused police officers are not required to give evidence at their discipline hearings, in some circumstances an adverse inference may be drawn against a police officer who fails to testify. It is open to the panel to make an evidentiary finding based on the absence of this evidence before us.

In *The Law of Evidence in Canada* (Sopinka ,John; Lederman, Sidney; Bryant,Alan 1999 Butterworths Canada Ltd.) the commentator writes at page 297:

In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify or fails to provide affidavit evidence on an application or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case or at least would not support it.

The Review Board has carefully considered whether an inference might be drawn in this matter. However, in the circumstances of the instant case, and after considering the totality of the evidence, the Review Board is unwilling to draw the adverse inference from the fact that Cadet Constable Brown was not called to testify. On this issue, the panel is unable to accept the evidence of one over the other and is therefore unable to make a finding on this issue.

(c) conversation between Corporal Moore-Reid and Ms. Corbin;

Corporal Moore-Reid disputes Ms. Corbin's recollection of their conversation that night, which Ms. Corbin characterizes as "degrading" her. Other than Ms. Barton's testimony that she overheard mention of "welfare take baby," the Review Board is presented with two substantially different recollections of the exchange, which it has considered against the backdrop of the evening's events and the tone of the police response and treatment of Ms. Corbin throughout.

While the Review Board accepts that Corporal Moore-Reid may truly believe her "firm" conversation with Ms. Corbin was not designed to denigrate or criticize the appellant and her family, consideration of the entire police interaction with Ms. Corbin that night and what did or did not follow, supports such a finding.

Once Mr. Wood was found not to have been in danger and given that the actions of an “enraged” Ms. Ring were readily recognized by the officers on scene as being “unwarranted,” “extreme,” and “inappropriate,” the panel finds that at this moment, when the nature of Mr. Wood’s condition is determined to police satisfaction, it would have been logical for police attention to have turned to Ms. Ring.

That did not happen.

Rather Ms. Corbin remained the focus of police; a focus that the Review Board finds cannot be sustained on an objective assessment of the events from the time the police arrived at 8 Willow Lane until they left approximately 20 minutes later.

While Corporal Moore-Reid justifies her referral of the Corbin family to social services as being in accordance with her “usual” practice and aimed at protecting Ms. Corbin’s baby from a drunken party guest, the Corporal seems to have forgotten that the police presence at that moment in apartment 12 had nothing to do with Ms. Corbin or anything she and her friends had done.

That presence was a direct consequence of police efforts to placate an aggressive and unreasonable Ms. Ring, who kept insisting that “something be done” about apartment 12 and who, when police response was not to her liking and in full view of four Truro police officers, arrogantly decided to take matter into her own hands.

Moreover, as Ms. Corbin had taken the responsible course and arranged for her baby to stay with the maternal grandparents, the Review Board feels the admonition and subsequent referral to Social Services was not reasonable in these particular circumstances.

However, the Review Board appreciates that the conversation was brief and took place in a context that could be described as confused. Moreover, considering the relevant positions of the parties, the circumstances in which the two had come into contact that night, the nature of that contact, the Review Board concludes that, such a characterization of Corporal Moore-Reid's words and demeanour, may have been reflected in Ms. Corkum's perception, regardless of the officer's intent.

(3) the actions the police did or did not take as a consequence of the night's events;

The Review Board accepts that the police were, "surprised" by the unexpected action of Ms. Ring kicking in Ms. Corbin's door, decided to enter the home to deal with the immediate emergency of Mr. Wood, spoke with Ms. Corbin and left, with only minutes having passed. Corporal Moore-Reid estimated the time as being "from five to seven minutes" and Ms. Corbin agreed they were not in her home for very long.

In fact, the official police log records the officers being on scene at “2210’ and “clear,” meaning, according to Corporal Moore- Reid, as “back in the car” by “2228.” So the entire call, from the moment they pulled into 8 Willow Lane, met with Mr. Gagnon and Ms. Ring in the parking lot, went upstairs to the third floor, dealt with apartment 11, entered apartment 12, dealt with that situation and returned to their vehicles, was approximately 18 minutes.

There were indications from the moment police arrived and stood talking to Mr. Gagnon and Ms. Ring, that both superintendents, but in particular Ms. Ring, were very upset and that Ms. Corbin was the object of their anger. Ms. Ring’s state did not abate and in fact worsened to an ultimate description of her by Constable Hickox as being “enraged.”

The Review Board has already stated that Corporal Moore-Reid was caught unaware by the Ms. Ring’s extreme action. However, the Review Board is troubled by the tolerance that the officers seemed to give her inappropriate behaviour and wonders if the reaction would have been the same had Ms. Corbin or any of her friends acted in a similar fashion. The officers’ acquiescence in the face of a difficult, insistent complainant generates an objectionable appearance of a double standard.

While the Review Board notes the caution of counsel for the police officers, Mr. Fisher, that it had heard only one side as neither superintendent had been called to testify, the Review Board finds that the evidence of these persons’ emotional state and aggressive and insistent manner, was well founded on the evidence presented.

The confounding irony of the night's events is that it was Ms. Corbin who became the focus of police attention when, in fact, she had done nothing wrong. Her apartment was damaged and the department of social services is contacted. There was some indication from the witnesses, although not specific, that the involvement of social services caused significant stress on the Corbin family, when, on the facts presented there does not appear to have been any reason for that to have been so.

As stated by Mr. Corbin in his submission before the panel, "All she did was chose not to answer her door."

Corporal Moore-Reid maintained that standard procedure combined with police concern for the absent child of Ms. Corbin, warranted the notation on the police report "social services will be called on Monday to advise them of the situation."

The Review Board is compelled to ask what situation?

The fact that a 17 year old single mother made the mature decision to have her child spend the night at her parents home on the night she was having a party, so her child would not be disturbed?

The fact that there was no evidence given by the police officers that any of the people at the party other than Mr. Wood, who was of age, was under the influence of alcohol?

The fact that an angry adult superintendent, who appeared to have a strong dislike for a teenaged tenant, had damaged property in full view of local police when that same superintendent decided police response had not been to her liking?

The Review Board is also troubled that the safety concern which the Review Board has accepted from the respondent officers' testimony as being their main motivation for police action up to that point, then seems to have receded with respect to Ms. Corbin and her child.

Once the police have gone, Ms. Corbin remained in close proximity to a superintendent whose belligerent behaviour is witnessed by police without as much as a lecture or warning to stay away from the tenants of apartment 12. This in spite of the fact that Corporal Moore-Reid is coming to conclude that there is animosity between the parties and that the evening's events could be described in her words, as a "wild goose chase" on the superintendents' part with respect to Ms. Corbin.

Counsel for the officers attempted to justify police inaction as being caught up in issues of landlord tenant law, submitting that Ms. Corbin did not own the door to her apartment and somehow suggesting that the conduct of Ms. Ring, as the landlord's agent, could be justified.

With respect the panel cannot accept that argument.

The police are not agents for the private agenda of a landlord or the even more private motivation of an individual superintendent. There could be no more compelling evidence of this truth, then Ms. Ring's own expressed fear to Corporal Moore-Reid that she herself might be charged for her actions that night.

The Review Board accepts that there was no malicious intent on the part of the police towards Ms. Corbin and further finds that Corporal Moore-Reid and her fellow officers in no way approved of the actions of Ms. Ring in relation to the Corbin apartment. Corporal Moore-Reid in particular showed genuine concern about Ms. Corbin and her young family and the panel acknowledges that the officer was unaware that the Corbin apartment door could not be securely closed after the incident. Moreover, the entire call lasted under 20 minutes and in this time the police were called upon to make lightning fast judgments, which the “wonderful illumination of hindsight” cannot be used to microscopically examine.

Nevertheless, the Review Board finds that the police did show poor judgment on the 8 Willow Lane call, especially after they were inside apartment 12 and had determined that Mr. Wood was going to be okay. The issue of Ms. Ring's criminal or civil culpability is more appropriately debated in other forums. However, the Review Board finds that, the police should have at the very least, lectured Ms. Ring about the impropriety of her actions, directed her to stay away from the

Corbin family and taken steps to ensure that in the following days, Ms. Corbin and her child were safe from the threat of harm from Ms. Ring.

However, the Review Board finds that these judgment errors are not sufficient to establish the disciplinary default of abuse of authority under the *Police Act* and therefore, after considering the above, the Review Board finds that Corporal Moore-Reid, Constable Rick Hickox, Constable Graham Purvis and Cadet Constable James Browne did not contravene section 5(i)(g)(iii) of the *Police Act Regulations* on the April 5, 2003 call to 8 Willow Lane.

That being the finding, the Review Board adds that in a rational world, Ms. Jennifer Corbin would be deserving of an apology for how the events of that night unfolded and then affected her and her family and the Review Board commends such an overture to the Truro Police Service and Corporal Moore-Reid.

Finally, the Review Board wishes to thank Mr. Corbin for his persistence and conscientious efforts in presenting this matter before the panel.

There will be no costs to either party.

DATED at Halifax, Nova Scotia this day of October, 2003.

MARION FERGUSON - CHAIR

LESTER JESUDASON - ALTERNATE CHAIR

DR.CHARLES SCHAFFER - MEMBER

Distribution:

Mr. Ronald Corbin - Complainant
Constable Graham Purvis - Truro Police Department
Constable James Brown - Truro Police Department
Constable Rick Hickox - Truro Police Department
Corporal Kelly Reid - Truro Police Department
Mr. David Fisher - Solicitor for the named officer
Chief K. C. MacLean - Truro Police Department
Mr. John Rafferty - Solicitor on behalf of Chief K.C. MacLean
Marion Ferguson - Chair, NS Police Review Board
Charles Schafer - Member, NS Police Review Board
Lester Jesudason - Alternate Chair, NS Police Review Board

File No.: 02-0047

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 Form 13 Notice of Review filed by **Ron R. Corbin**, requesting a review by the Nova Scotia Police Review Board of the November 22, 2002 decision of Chief K.C. MacLean of the Truro Police Service

DECISION

Ms. Marion Ferguson, Chair
Dr. Charles Schafer, Member

Mr. Lester Jesudason, Alternate Chair