

**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:** An appeal filed by **CONSTABLE DERRAH REID**, Member, of the Amherst Police Department, requesting a review of a decision made by Chief Charles Rushton on the 9<sup>th</sup> day of January, 2004, in relation to an internal disciplinary allegation made by Deputy Chief Ian Naylor made on September 15, 2003.

**BEFORE:** Mr. Lester Jesudason - Alternate Chair  
Mr. Brian McIntosh - Member  
Mr. Orville Symonds - Member

**COUNSEL:** Mr. David Fisher on behalf of Constable Derrah Reid  
Mr. Brian Creighton on behalf of Chief Charles Rushton

**HEARING DATE:** February 6, 2004

**PLACE:** Town Council Chambers, 5 Ratchford Street, Amherst, Nova Scotia.

**DECISION DATE:** April 16, 2004

**DECISION:** Appeal Denied

On February 6, 2004, the Nova Scotia Police Review Board met to consider the appeal filed by Constable Derrah Reid of the Amherst Police Department, requesting a review of a decision made by Chief Charles Rushton on January 9, 2004, in relation to an internal disciplinary allegation made by Deputy Chief Ian Naylor on September 15, 2003.

In that decision, Chief Rushton found Constable Derrah Reid guilty of committing a disciplinary default by engaging in discreditable conduct and insubordination contrary to Sections 5(1)(a)(i), 5(1)(a) (iv) and 5(1)(b)(i) of the Code of Conduct in the *Police Act* Regulations. Chief Rushton imposed a penalty of a reprimand and required Constable Reid to apologize to Deputy Chief Naylor.

At the hearing, Chief Rushton was represented by Mr. Brian Creighton and Constable Reid was represented by Mr. David Fisher. At the beginning of the hearing, the parties agreed that the Board had jurisdiction to hear the Appeal and agreed that the hearing was to deal with both whether or not a disciplinary default was committed by Constable Reid and, if so, what penalty should be imposed.

The Board heard evidence from Deputy Chief Naylor of the Amherst Police Department, Constable Tim Hunter of the Springhill Police Department, Constable Jennifer Russell of the Springhill Police Department, Constable Bruce Miller of the Springhill Police Department, Constable Scott White of the Amherst Police Department, and Constable Derrah Reid of the

Amherst Police Department. The basic facts of what transpired on the day in question are generally not in dispute. Based on the evidence, the Board makes the following findings of fact:

1. On September 12, 2003, Deputy Chief Naylor and Constable Reid attended the Amherst Police Department's annual firearms qualifications and training session at the Federal Institute at Springhill, Nova Scotia. In addition to Deputy Chief Naylor and Constable Reid, Constables Kierstead, White and Becker of the Amherst Police Department as well as Constables Miller and Russell of the Springhill Police Department were also present for the training. The designated trainers were Constable Hunter and Constable Maddison who were certified provincially to instruct the training.

2. The training process lasted for several hours and consisted of three parts. The first part was a qualifications session where the officer had to fire at targets after which his or her accuracy would be checked. The second part consisted of technique training which covered such things as how to get in and out of a police vehicle, how to run with a firearm, etc. The third part consisted of simmunition training. In this third part, the officers engaged in various scenarios using weapons which discharged ammunition similar to paintballs. The purpose of simmunition training was to evaluate the officers' decision making abilities of when to discharge their firearms. After each scenario, there was discussion with the trainer about why the officer took the actions he or she did.

3. Shortly prior to the commencement of the simmunition training, Constable Reid approached Deputy Chief Naylor and questioned him as to why the officers had to take the simmunition training. Specifically, he indicated that Chief Rushton of the Amherst Police Department had advised that simmunition training was not mandatory while Deputy Chief Naylor indicated it was. Deputy Chief Naylor's response was that, while the simmunition training was not mandated by the Province, the Amherst Police Department had made a decision that its members were required to take it. Constable Reid did not immediately accept this answer and continued to question Deputy Chief Naylor as to why the training was necessary. Deputy Chief Naylor continued to give similar responses and the conversation became somewhat animated. After the third such exchange, Deputy Chief Naylor said that he had explained his reasons to Constable Reid and indicated that the discussion on the matter was ended.

4. While it appears that simmunition training was not mandated provincially, the Board accepts the evidence of Constable Hunter that simmunition training is a very valuable component of an officer's training. However, the Board also accepts that, as Constable Reid testified, his reluctance to participate in same was largely due to him being shot by a real firearm a few years ago in the line of duty and that he therefore does not like any firearms pointed at him and sees simmunition training as "playing with guns".

5. Notwithstanding Constable Reid's reluctance, Constable Reid fully participated in the simmunition training once it began. By all accounts, the simmunition training went smoothly. During scenario training sessions, the officers took matters very seriously. However,

between scenario training sessions, the Board accepts there was a fair amount of joking especially in the hut where the classroom sessions were held.

6. At some point during the simmunition training, Deputy Chief Naylor played the role of a perpetrator and got hit on his belly by a paintball bullet which left a large black bruise. After the training was over, Deputy Chief Naylor was speaking with Constables Russell and Miller in the hut. He made reference to his bruise and said words to the effect of, "You wouldn't shoot up poor Dean like this if he were here would you?" By "Dean", Deputy Chief Naylor was referring to Deputy Chief Ruddick of the Springhill Police Department.

7. Constable Reid was approximately six to seven feet away from Deputy Chief Naylor and Constables Russell and Miller and not directly involved in the conversation. However, upon hearing Deputy Chief Naylor's comment, Constable Reid made a response to the effect of, "No, because we respect him." Constable Reid then walked out of the door of the hut that opened onto the firing range.

8. Deputy Chief Naylor was upset by the comment and followed Constable Reid and said to him, "What did you say?" Constable Reid ignored the question and continued walking out the door. Deputy Chief Naylor followed him outside the door and indicated to Constable Reid that he had "crossed the line" to which Constable Reid responded, "maybe I did." Constable Reid was on his way to attend a dentist appointment and Deputy Chief Naylor indicated that the matter would be dealt with later.

9. A number of the other officers heard Constable Reid's comment. Constable Hunter testified that he felt it was disrespectful to Deputy Chief Naylor as well as himself and Constable Maddison who had put on the training session. He indicated that such a comment was inappropriate to say to a Commanding Officer. Constable Russell testified that she did not know where Constable Reid's comment came from and that she felt uncomfortable when she heard the comment. Because of this discomfort, she looked at her partner, Constable Miller, to see whether or not they should leave. It should be noted that Constable Russell was a very junior officer who began her career as a police officer in Springhill approximately 3 months before the day in question. She testified that Constable Reid's comment was certainly not appropriate in relation to what she was taught during her training as to the level of respect that should be given to rank and senior officers. She testified she would not make that sort of comment to any officer and did not feel that Constable Reid respected Deputy Chief Naylor by making that comment. She also indicated that it was unfortunate that the comment was made since, prior to it occurring, the training day had gone smoothly. Constable Russell testified that she, Constable Miller and Constable Hunter discussed the incident when cleaning up after the other officers left and that they all felt Constable Reid's comment was inappropriate. She further testified that later, during the drive back with Constable Miller, she learned that there had been a "history" between Deputy Chief Naylor and Constable Reid.

10. Constable Miller testified that, while he heard the comment, he took the comment as a joke. The Board questions that conclusion in light of the fact that Constable Miller acknowledged that Constable Reid kept walking away when Deputy Chief Naylor went to follow

him to the door and that he knew Deputy Chief Naylor had made it clear that he was going to “do something” about the comment. Thus, at the very least, it would seem that Constable Miller should have been aware that Deputy Chief Naylor did not consider the comment to be a joke. Also, somewhat surprisingly, Constable Miller did not recall having any subsequent discussion with Constable Russell or Constable Hunter about the incident.

11. The Board also heard evidence from Deputy Chief Naylor that he and Constable Reid had a “prior history”. Apparently, Deputy Chief Naylor participated in an investigation involving Constable Reid and Deputy Chief Naylor described their relationship as “not close buddies”.

12. Constable Reid testified that, after his dental appointment, he realized that he probably should not have made the comment to Deputy Chief Naylor which he characterized as an “off the cuff remark in jest” comment. He indicated that he called the office in order to try to reach Deputy Chief Naylor and ended up speaking with Commissioner Crowder. He was advised that Deputy Chief Naylor had left for the day. Constable Reid then attempted to call Deputy Chief Naylor at home. He spoke to Deputy Chief Naylor’s wife who advised that he was not at home. Constable Reid testified that he tried to reach Deputy Chief Naylor again at home later that evening but there was no answer. Constable Reid indicated that the purpose of his attempted communications with Deputy Chief Naylor was to apologize for his comment but, when he met with no success in his initial contacts, he did not make any further attempts as he believed Deputy Chief Naylor was going to charge him with a disciplinary default. However, to

Constable Reid's credit, approximately a week or two before this hearing, Constable Reid did attend Deputy Chief Naylor's office and apologized for the incident.

**DISPOSITION:**

As noted earlier, in the Disposition of Internal Disciplinary Proceedings Form (Form 12), Chief Rushton found Constable Reid engaged in discreditable conduct and insubordination and imposed a penalty of a reprimand and an apology. The Form 8 which was received by Constable Reid on November 21, 2003, made reference to a disciplinary default contrary to Section 5(1)(a)(i), 5(1)(a)(iv), and 5(1)(b)(i) of the Code of Conduct found in the *Police Act Regulations* of Nova Scotia. Those sections read 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,

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

(a) engages in discreditable conduct by

(iv) using oppressive or abusive conduct or language towards any other member of a police force,

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

**(b)** is insubordinate by

**(i)** word or action, or

In his closing submissions and, indeed at the commencement of the hearing, Mr. Fisher, candidly conceded that the comment made by Constable Reid was inappropriate and acknowledged that it is important that one not offend someone else in the workplace. He indicates that Constable Reid responded to Deputy Chief Naylor's joke and suggested that Deputy Chief Naylor could have dealt with the matter in an informal way as opposed to invoking the disciplinary process. In Mr. Fisher's submission, if a person is willing to make a joke, he or she should also be willing to take a joke. He made reference to the previous Board decisions of *Hearn* and *Corbin* and submitted that, while it is Constable Reid's position that there was no disciplinary default committed, if the Board makes a finding, it should conclude that there was merely a "technical" breach or conduct amounting to "poor judgment" which does not warrant any disciplinary action being taken against Constable Reid.

The Board does not accept the suggestion that Constable Reid's comments should be construed as merely being a "joke". The Board makes this finding for a number of reasons including that Deputy Chief Naylor and Constable Reid had a prior "history", the two had earlier been involved in a somewhat animated discussion about whether or not the simmunition training was necessary, Constable Reid was six to seven feet away and not directly involved in the conversation between Deputy Chief Naylor and Constables Russell and Miller, Constable Reid

continued to walk away from Deputy Chief Naylor after making the comment, and Constable Reid himself acknowledged that his comment may have “crossed the line”.

Turning to the issue of disposition, the Board accepts that, in the circumstances, Constable Reid’s comments do not necessarily constitute insubordination or “oppressive or abusive conduct” contrary to Regulations 5(1)(b)(i) or 5(1)(a)(iv) of the Code of Conduct. However, the Board does find that a disciplinary default was committed under Regulation 5(1)(a)(i). While the Board accepts Constable Reid’s evidence that his comment was made “off the cuff” and finds that his comment was likely made in the heat of the moment, this does not take away from the fact that his comment can be considered “prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Police Force” contrary to Regulation 5(1)(a)(i).

In order for a police force to function properly, its commanding officers must have, and be seen to have, the respect of their members. At the time Constable Reid made his comment, he was not respecting Deputy Chief Naylor. Indeed, his comment explicitly indicated this.

Certainly the Board is aware that, in small town police departments, formalities may be somewhat less rigidly applied. Thus, if the comment made by Constable Reid was made directly to Deputy Chief Naylor in the absence of any other members, the Board may be inclined to accept Mr. Fisher’s suggestion that, while the comment was inappropriate, it may not warrant formal discipline. However, in the case at bar, not only was the comment made in the presence

of other members, but it was also made in the presence of members from another police department. Indeed, both Constables Hunter and Russell testified they viewed Constable Reid's comments as being disrespectful and inappropriate to say to a Commanding Officer. The Board is particularly troubled by the fact that Constable Reid made his comment in the presence of Constable Russell, a very junior officer, who would likely be very impressionable to the manner in which Constable Reid addressed Deputy Chief Naylor, his superior officer. As Constable Russell testified, the incident made her feel very uncomfortable especially since she was new and, as a result, she wanted to leave the hut area where the incident occurred. As a Senior Constable, Constable Reid should not only have considered the effect his comment would have on Deputy Chief Naylor, but also on the other officers who were present in the area. He clearly failed to do this. The Board therefore finds that, in all the circumstances, Constable Reid's comment is "prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Police Force" contrary to Regulation 5(1)(a)(i).

Notwithstanding the above, the Board commends Constable Reid for attempting to apologize to Deputy Chief Naylor later on the day in question and ultimately doing so a week or two prior to the commencement of this hearing. Thus, in recognition of the fact that a reprimand represents the lower end of the penalty scale for a disciplinary default, the Board feels that affirming Chief Rushton's penalty of a reprimand is appropriate in this case. The Board also orders that no costs will be awarded in this matter.

In closing, it is the Board's sincere hope that, in light of the fact that Constable Reid has already apologized to Deputy Chief Naylor, the two officers can now put this unfortunate incident along with any "past history" behind them and move forward in a mutually beneficial way. Certainly, police officers' jobs can be difficult at the best of times. The respect, support and encouragement of fellow officers can help make the difficult times easier. When officers treat each other in this manner, the officers, their police department, and the citizens they ultimately serve all stand to benefit.

Dated at Halifax, Nova Scotia this 16<sup>th</sup> day of April, 2004.

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**LESTER JESUDASON**  
Alternate Chair

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**BRIAN MCINTOSH**  
Member

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**ORVILLE SYMONDS**  
Member

Distribution:

Constable Derrah Reid - Amherst Police Department  
Mr. David Fisher - Solicitor for the named officer  
Chief Charles Rushton - Amherst Police Department  
Brian Creighton - Solicitor on behalf of Chief Rushton  
Lester Jesudason - Chair, NS Police Review Board  
Brian McIntosh - Member, NS Police Review Board  
Orville Symonds - Member, NS Police Review Board

**File No.: 03-0155**

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**AND IN THE MATTER OF:**

An appeal filed by **CONSTABLE DERRAH REID**, Member, of the Amherst Police Department, requesting a review of a decision made by Chief Charles Rushton on the 9<sup>th</sup> day of January, 2004 in relation to an internal disciplinary allegation made by Deputy Chief Ian Naylor made on September 15, 2003.

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

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Mr. Lester Jesudason, Alternate Chair  
Mr. Brian McIntosh, Member  
Mr. Orville Symonds, Member