

DECISION

File No. 04-0029

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 **PAUL HARRIS**, Complainant, against **CONSTABLE DERRICK FISH** of the Halifax Regional Police, requesting a review of a decision made by Deputy Chief Chris McNeil on December 31, 2004.

BEFORE: Mr. Lester Jesudason, Alternate Chair
Mr. Peter James, Member
Dr. Charles Schafer, Member

COUNSEL: Mr. Joel Pink, Q.C., on behalf of Paul Harris
Mr. Patrick Duncan, Q.C., on behalf of Constable Derrick Fish
Mr. Randolph Kinghorne on behalf of the Halifax Regional Police

HEARING DATES: Written Submissions

DECISION DATE: May 10, 2007

DECISION: Reprimand

BACKGROUND

[1] On December 6, 2006, the Nova Scotia Police Review Board found that Constable Fish contravened **ss. 5(1)(g)(ii) and 5(1)(g)(iii) of the Police Act Regulations**. All counsel involved in the hearing agreed that the penalty stage of the hearing would proceed by way of written submissions. The Board has reviewed those submissions carefully in arriving at the following decision on penalty.

[2] Having found that Constable Fish contravened **ss. 5(1)(g)(ii) and 5(1)(g)(iii) of the Police Act Regulations**, the powers of the Police Review Board to impose penalty are set out in **s. 5(3) of the Police Act Regulations** which states:

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;
- (c) reduce the member in rank;
- (d) suspend the member without pay for not more than 30 days;
- (e) order the member to pay a fine, not exceeding 10 days pay of the member as a member of the police force, with time to pay at the discretion of the authority;
- (f) order a period of close supervision of the member;
- (g) reprimand the member;
- (h) order the member to undergo counselling, treatment or training acceptable to the authority, the expense of such counselling, treatment or training to be assumed by the police force;

- (i) make any other order the authority deems fit including a combination of the penalties mentioned in clauses (c) to (h).

[3] In arriving at an appropriate penalty for Constable Fish, the Board has considered all the submissions of counsel as well as its factual findings and reasons in its decision of December 6, 2006. In the Board's view, the following facts are particularly important:

1. Constable Fish did not deliberately intend to force open Mr. Harris' door in order to arrest him (p. 33, para. 2 of Decision);
2. Upon the door opening, Mr. Harris moved towards Constable Fish at a quick pace in a confrontational manner (p. 33, para. 3 of the Decision);
3. Upon seeing Mr. Harris coming towards him, Constable Fish stepped into Mr. Harris' apartment to confront him. In doing so, Constable Fish did not turn his mind to the possibility of moving laterally or backwards outside of Mr. Harris' residence (p. 33, para. 4);
4. In light of his raised hands, and the other threat cues demonstrated by Mr. Harris, Constable Fish reasonably concluded that Mr. Harris may try to assault him (p. 34, para. 5);
5. The injury to Mr. Harris' left eye was likely only caused by one direct blow by Constable Fish as opposed to repeated blows (p. 35, para 8); and
6. The entire physical altercation between Constable Fish and the other officers with Mr. Harris was relatively brief in duration and the force applied by any of the officers while struggling with Mr. Harris while on the ground was not excessive (p. 43, para. 2).

[4] In addition to the above, the Board has also placed emphasis on the following points from counsels' submissions on penalty:

1. Constable Fish has no previous disciplinary defaults entered on his record;
2. Since September of 2000, Constable Fish has taken a number of courses including courses which relate to use of force. Furthermore, he has also

taken the Family Violence Training Program and has had courses in "handcuffing and search" and "legal articulation".

3. Constable Fish has accepted the decision of the Board and, on his own volition, has provided a written apology to Mr. Harris;
4. It appears that Constable Fish has worked hard to establish a career in the police service and most recently, on February 26, 2007, began working with the General Investigation Section of the Halifax Regional Police. His counsel submits that Constable Fish has cooperated with the investigation of his complaint and there is no evidence that suggests otherwise.
5. Both counsel for Mr. Harris and counsel for Constable Fish suggest that imposing a reprimand would be an appropriate penalty. Counsel for Mr. Harris also suggests that the Board should require Constable Fish to undergo further training in relation to the use of force and entering private dwellings.

DECISION

[5] In finding that Constable Fish contravened **ss. 5(1)(g)(ii)** and **5(1)(g)(iii)** of the **Police Act Regulations**, the Board did not find that he deliberately did so with any bad motive towards Mr. Harris. Rather, it found that when faced with what he thought was a confrontational situation, he made an ill-advised decision to enter into Mr. Harris' residence when there were other more desirable options available to him. That being said, not only was the entering of Mr. Harris' apartment unlawful, but that decision likely resulted in the physical confrontation which subsequently ensued. Furthermore, even if one accepts that the injury to Mr. Harris' left eye was caused by a single blow, the injury itself was quite significant. In addition, clearly the whole incident would reasonably have caused considerable emotional upset to Mr. Harris over and above the physical injuries he sustained.

[6] At the same time, the Board does not believe Constable Fish to be a "bad police officer" but rather, one that made a poor decision on the night in question. Indeed, based on his discipline free service record, his acceptance of the Board's decision, his voluntarily providing a letter of apology to Mr. Harris, and his continued progress with his career with the Halifax Regional Police Service, the Board concludes that Constable Fish is not an officer who has unethical tendencies. In light of these factors, the Board does not wish to impose a penalty which unduly blemishes Constable Fish's career and hopes that he will learn from this experience as he continues to serve the citizens of the Halifax Regional Municipality.

[7] Thus, considering all the circumstances and unique factors of this case, the Board concludes that the penalty of a reprimand is appropriate. In doing so, the Board is of the view that such a penalty not only addresses Constable Fish's individual circumstances, but will act as a sufficient general deterrent for other officers. Furthermore, given the unique circumstances in which Constable Fish found himself (i.e. having to make a relatively quick decision when faced with what he perceived to be an imminent threat), the Board does not believe it is necessary to require him to undergo any further training in relation to the use of force and entering private dwellings. Not only does it appear that Constable Fish has had relevant training in use of force issues, but he also participated in lengthy disciplinary process during which the Board heard much evidence and received extensive submissions on the powers of

police officers to enter private dwellings. Consequently, the Board is of the view that no additional training for Constable Fish is necessary.

[8] In closing, the Board wishes to thank all counsel for their helpful submissions as well as the manner in which they conducted themselves throughout the course of this hearing. While the events which transpired during the early morning of February 4, 2004 are indeed unfortunate, it is hoped that the parties can put the negative feelings which may have existed behind them. Certainly, Constable Fish's letter of apology appears to be a good start in this direction.

DATED at Halifax, Nova Scotia, this 10th day of May, 2007.

LESTER JESUDASON
Alternate Chair

PETER JAMES
Member

CHARLES SCHAFER
Member

Distribution List

Mr. Patrick Duncan - Solicitor on behalf of the Officer
Mr. Joel Pink - Solicitor on behalf of the Complainant
Mr. Randolph Kinghorne - Solicitor on behalf of the Halifax Regional Police
Mr. Paul Harris – Complainant
Chief Frank Beazley – Halifax Regional Police
Constable Derrick Fish – Halifax Regional Police

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PENALTY DECISION

BEFORE:

Lester Jesudason – Alternate Chair
Peter James – Member
Charles Schafer - Member