

NOVA SCOTIA POLICE REVIEW BOARD

IN THE MATTER OF: The *Police Act*, Chapter 31 of the *Acts* of 2004 and the Regulations made pursuant thereto

- and -

IN THE MATTER OF: An appeal filed by **Jason Ehler and Ashley Brown**,
Complainants, against The Truro Police Service, requesting
a review of a disciplinary decision made by Chief David
MacNeil dated March 3, 2021

BEFORE: Jean McKenna, Chair
Hon. Simon J. MacDonald, Vice-Chair
Peter Mancini KC, Member

COUNSEL: Allison Harris, Carter Simpson, Counsel for Jason Ehler
and Ashley Brown
Charles Thompson & Ashley Dutcher, Burchell
MacDougall, Counsel for Truro Police Service

LAST BRIEF RECEIVED: April 20, 2023

WRITTEN SUBMISSIONS: April 20, 2023

DECISION DATE: July 17, 2023

[1] This matter has come before the Nova Scotia Police Review Board (the Board) as a result of the disappearance of Dylan Ehler (Dylan). Dylan disappeared from 321 Queen Street, Truro, on May 6, 2020. He was last seen in his grandmother, Dorothy Parsons', back yard on the aforementioned date and place. Dylan is the three-year-old son of the complainants herein, Jason Ehler (Ehler) and Ashley Brown (Brown).

[2] On November 2, 2020, Ehler filed a complaint about the manner in which the Truro Police Service (TPS) handled the investigation, particularly the adequacy of the investigation and secondly about the communication between the TPS and the complainants.

[3] Chief Dwayne Pike of the Amherst Police Department was requested to do an investigation of the complaint. He prepared a report dated March 1, 2021, and concluded there was no breach of the Nova Scotia *Police Act* or its Regulations (the Act). Based on his report, Chief David MacNeil (MacNeil) on March 3, 2021, dismissed Ehler's complaint.

[4] On March 25, 2021, Ehler filed a Notice of Review of the above decision. By consent, Brown was added to the complaint as a complainant.

[5] After reviewing the matter, the Police Complaints Commissioner (the Commissioner) directed the Board to hold a hearing into the complaint in relation to police procedures and investigations. The Commissioner did not refer those portions of the complaint dealing with communications between TPS and the family.

[6] The Board held hearings in this matter with the parties and counsel present in Truro between February 13-17, 2023. Post hearing briefs were received by the Board. The last one was dated April 20, 2023. As of that date, Dylan has not been found.

[7] The Board proceeded by way of a *de novo* hearing to deal with the adequacy of the investigation by the TPS into the disappearance of Dylan.

[8] The Board has considered the oral evidence and the exhibits presented over four days as well as the written submissions received from all the parties in rendering its decision. Ehler and Brown are private citizens who suffered a significant loss and deserve to have the Board answer the issues raised by them.

[9] Thus the Board intends to proceed with its reasoning and conclusions by dealing with each point in the manner which the complainants prioritized them.

[10] TPS Counsel, in their brief, argued that some of the allegations listed in the complainants submissions differed significantly from those listed in their complaint and refers to several examples. In response, Ehler and Brown's counsel argued that they were not given sufficient materials prior to the hearing. They argued they did not receive full disclosure and referenced certain material being provided to them days before the hearing. The Board has concluded that it will consider the fact Ehler and Brown are citizens who suffered a tragic loss and given the facts of this case, are prepared to consider all arguments raised by their counsel.

[11] In their post hearing brief, TPS Counsel stated they did not provide all of the file to the complainants nor in the joint exhibit books. TPS Counsel stated they provided the portions of the file that relates to the allegations set out in the complaint. They explained in paragraph 24 of their submissions, that TPS is trying to balance its need to disclose all documentation relative to the complaint without disclosing material that is irrelevant to the complaint or that could damage future investigative efforts and possible criminal charges if new information is discovered that may point to criminality in relation to Dylan's disappearance. The Board usually requires full disclosure between all the parties in matters such as this. It appears that TPS, on their own, determined which documents they were or were not going to provide to the complainants. The Board's view is that, in future, if the determination is made that certain documents ought not to be provided then the TPS should not determine this on their own. They should appear before the Board and ask that they not be tendered. The Board should have the authority to determine what or what is not relevant and not one particular side of the case. Having said that, the Board appreciates the sensitivity of the matter and is prepared to allow the determination to take place in this case and move on to try to bring a conclusion in the matter to Dylan's parents.

[12] A joint exhibit book was filed by the parties as exhibit number one. Tab two therein contains a timeline of events, reports filed and actions of the police testified to by witnesses from both sides. It is not so much a question of what the police did, the complainants suggest, as to what they did not do, in the course of the investigation. The timeline sets out the events that followed on May 6, 2020. Some highlights of the timeline are as follows:

- 1) Brown took Dylan to her mother, Parsons, home at 321 Queen Street, Truro, NS, with the intention of leaving him there so that she could visit with a friend between 10:30 and 11:00 a.m.
- 2) Brown left her mother's residence around 11:00 a.m. and left Dylan in the care of his grandmother, Parsons.
- 3) Jeff Parsons (Jeff), Parsons' husband, came home at 12 noon for lunch. He left at 12:45 p.m. and said that Dylan was running around playing and watching television.
- 4) Sometime between 12:45 p.m. and 1:15 p.m. Dylan and his grandmother went outside. Parsons turned her back to deal with her dog for anywhere between 8 and 10 seconds. The amount of time differs between witnesses as to how long it was. However, when she turned around Dylan was missing.
- 5) At 1:24 p.m., TPS were called and notified about the missing child and began a Missing Persons Investigation, which continues to this date. Cst. Kim, Cst. Germaine and Sgt. Hunka were notified by TPS Dispatch about a missing child and the police investigation began.
- 6) The active search for Dylan continued for seven days between the dates of May 6 and May 13, 2020. The search involved agencies other than TPS. Among the other agencies involved were the RCMP, Dept. of Natural Resources, Ground Search and Rescue (GSAR), Truro Fire Department, Cobequid Fire Department, Colchester Special Hazards Response Unit and consultation with the Canadian Coast Guard. The active search concluded on May 13, 2020.
- 7) Dylan was not found and the TPS investigation remains open today.

THE LAW

[13] It is alleged by the complainants the TPS committed a disciplinary default under section 24(3)(a) of the *Police Act* Regulations. It states as follows:

24(3) A member who neglects their duties in any of the following ways commits a disciplinary default:

- (a) Neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member;

[14] One of the leading judicial decisions concerning failure of police officers to improperly and diligently discharge their duty is in **P.G. v. Police Complaints Commr. (1996), 90 O.A.C. 103 (DC)**., where the divisional court in Ontario held that either of two situations is required in order to establish neglect of duty:

- 1) There must be some element of willfulness on the part of the police officers neglect, or
- 2) There was degree of neglect which would make the matter cross the line of a mere performance consideration to a matter of misconduct.

[15] In that particular case, the Board found the Police Constables' conduct was the result of inadvertence: he made "an honest mistake" and an honest mistake provided a defense.

[16] Thus, the law is clear that either willfulness or significant degree of default must be proved to establish neglect of duty, but neglect does not capture inadvertence and "honest mistake" therefore provides a defense to a charge of neglect of duty.

[17] The Board no doubt has to consider the facts of this matter and the actions of the TPS to assess whether or not their actions were reasonable in the situation and during the course of the investigation of Dylan disappearance. One might ask the question; did they thoroughly investigate this case to a reasonable investigative standard, especially given the principle set forth in **P.G. v. Police Complaints Commr., supra.**

[18] In a somewhat similar case but not with the same set of facts, Cape Breton Regional Police Service (Re) 2021 CanLii 26831, the Board dealt with a case alleging that the police service was guilty in general of misconduct in several ways. The Board, in that decision, discussed its role and stated it to be as follows:

“7. We emphasize that it is not for this Board to determine the cause of this traffic accident, nor to assign criminal or civil culpability. Rather, our mandate is to consider whether the CBRPS acted reasonably in initially responding to the party, in their subsequent actions at the accident scene, and finally, in their follow up investigations.”

ANALYSIS AND CONCLUSION

1. FAILURE TO PROPERLY SECURE THE SCENE AND IMMEDIATE AREA

[19] The evidence, without doubt, indicates that the TPS responded to the call of Dylan’s missing immediately. Cst. Nicole Germaine was on patrol that day in Truro and arrived at the scene of 321 Queen Street within four minutes of the call. Cst. Germaine questioned Parsons about the incident then proceeded to search the area for Dylan. She obtained a photo of Dylan and a description of what he was wearing then distributed it to other members of the police force on shift and to dispatch. This was all sent out within 10 minutes of her arrival on the scene. Shortly thereafter, Cst. Hunka arrived and instructed Cst. Germaine to contain the scene and to support Parsons.

[20] Cst. Hunka was the Patrol Sergeant on duty that day. At the scene, he asked if there had been a search of the home and any vehicles; he was informed by Constable Germaine that the searches had been done. Cst. Hunka’s plan was to have as many “boots on the ground” as he could and immediately decided to involve the Police K9 Unit. At 1:37 p.m., a request was sent out to have the K9 Unit contacted. Cst. Germaine testified that she blocked Elizabeth Street with her vehicle as required. Under cross-examination, she said she allowed family members of Dylan’s down the street but not the general public. The officers were multi-tasking in their effort to find Dylan which is to be expected in such a situation.

[21] It appears the essence of the complainants' argument is that there should have been more officers searching in the area for Dylan. Yet, they also argue that there were too many people in the area which impacted the K9 search results. The complainants stated that this caused the search to be ineffective.

[22] Cst. Milbury was the police officer who was in charge of the K9 Unit and he testified he received the call sometime around 1:30 p.m. He was advised there was a missing child and that the K9 Unit was needed. He was off duty that day and advised he would come immediately to the scene. He had been spending the day with his children. He took his children home then, as he said, "geared up" and got the dog ready. He said he was on the scene within 35-40 minutes. The Board concludes he agreed to come to the scene as soon as he was contacted. It is noted that the complainants argued that some neighbors and residents were searching for Dylan in the area and thus were contaminating the scene. However, Milbury stated this was really no surprise to him because he expected people to be on the scene before he got there. He said in an urban setting, there would be more contamination from foot traffic than in a rural area. However, this did not prevent him and Onyx, the K9, from searching the area.

[23] The complainants also claimed that TPS violated their own Standard Operating Procedures (SOP) "K9 Policy and Procedure." This was not raised at the hearing and thus no evidence was called on this point. We accept the argument from TPS counsel that this policy has to be considered under the circumstances existing here. The police were searching for a missing child and we are convinced the actions of the TPS not to lock down the area pending the arrival of the K9 unit was reasonable.

[24] The complainants also argue that Truro Fire Service (TFS) should have been called sooner and asked to assist with the search during daylight hours. Ehler and Brown argue, had that been done, Dylan might have been found. Given all the material before us, the Board concludes that is mere speculation. There were numerous people on the ground looking for Dylan and we find that TFS were notified within a reasonable amount of time.

[25] The Board finds that the TPS were balancing their search efforts with containment action. TPS used officers on duty, called out others to come help along with officers from other agencies. TPS were balancing the resources at their disposal judicially and were diligently and properly performing their duties when it came to securing the area and searching for Dylan.

1. FAILURE TO PROPERLY SEARCH THE WOODS AND LEPPER BROOK, OR SEARCH IT WITHIN A TIMELY MANNER

[26] The complainants argue that it didn't appear that any TPS officers searched the woods and brook on Elizabeth Street for an hour until Cst. Milbury arrived at around 2:25 p.m. They submit that an hour is not an acceptable amount of time to wait to search for Dylan within 100 metres of where he was last seen. They submit there there is no adequate reason for TPS members to have failed to promptly, and diligently perform a basic ground search and thus, this would constitute a disciplinary default.

[27] D/Chief Hearn testified that, when he received the call at 1:24 p.m. he went to Stanfield Ball Field and to the train bridge/train tracks. He said this gave him a wide view of the area including a view of Lepper Brook. He was there by 1:41 p.m. He had radio connection/communication and was aware of what was occurring. From the photographs and the evidence, the Board concludes that Lepper Brook is close to the back yard of the Parsons residence. The evidence reveals that on May 6, Lepper Brook was unusually high. In fact, one witness described it as "raging." The Board reviewed a number of exhibits that illustrate the proximity of the brook to the home (exhibit 3), book of exhibits, tab 16, page 5 and the conditions of the brook that day as contained in exhibit 8.

[28] Cst. Germaine as well searched the buildings around the property, including the Parsons apartment. Cst. Kim was searching the railroad tracks.

[29] Cst. Hunka was at Elizabeth Street within 5 to 10 minutes after the call, just after Cst. Germaine and Cst. Kim. On cross-examination Cst. Hunka said he went to the brook and checked the culvert through which the brook runs. He also recalled walking to the brook and it was not difficult to get there.

[30] We find there was a reasonable and appropriate division of the labour on the facts presented by TPS in their efforts to find the missing boy.

2. FAILURE TO PROPERLY CONDUCT A NEIGHBOURHOOD CANVAS

[31] Furthermore, the Board concludes, given the searching that was done, and the areas covered by the TPS and others who assisted them, that every officer who had been called to duty had been called to work on the search for Dylan. We find that the TPS were trying to balance the resources at their disposal judiciously while diligently and properly performing their duties when it came to securing and searching the area. Cst. Germaine searched the front and back yards of the homes on Elizabeth Street and spoke to several people who answered their door. Both she and Cst. Kim went to every door and spoke to every resident who was home at the time once the K9 Unit left the area. Again, a second canvas was done later that day by Csts. Taylor, Titus and Cormier on Elizabeth Street. While that was being done, other police officers were checking video cameras. Cst. Emery, who was checking leads, spoke with a number of individuals whom he encountered to see if they knew anything about the missing child. Over the next few days, businesses were checked, videos viewed and people questioned. The fact that Cst. Germaine did not leave a card in doors the day Dylan went missing, nor did she ask to see everyone in the house where the door was answered does not mean the canvass was insufficient.

[32] The complainants raised an issue about a questionnaire that they felt should have been completed by the police. They referred to a template they had prepared and used in their own investigation of the neighborhood. They submitted these documents to the board. Two of the questionnaires indicate that were completed in June 2020. Counsel for TPS pointed out there were several problems with the questionnaires as referred to in her post hearing memorandum. Some of the questionnaires were not fully filled out, signed only by initials, etc. and in essence, not properly completed.

[33] As we balance the testimony provided by the complainants with the evidence from TPS, we conclude and find that TPS made diligent efforts to conduct a canvass which not only included Elizabeth Street but also surrounding areas including the railyards and local businesses.

3. FAILURE TO EMPLOY THE APPROPRIATE RESOURCES PROMPTLY

[34] Although the complainants say they appreciate the extensive resources deployed in the search for Dylan, they claim TPS should have deployed the following three key resources more effectively which may have changed the outcome:

- a. **GSAR should have been activated immediately**
- b. **An EMO alert should have been requested and pushed out right away**
- c. **Fire Service, Coast Guard and/or RCMP Divers should have been called on May 6, 2020 (says “right away” in the submissions and no date) right away**

[35] The complainants argue that it took too long for GSAR to be employed. The Board heard evidence from D/Chief Hearn and Tom Fitzpatrick, the Deputy Search Manager for Colchester GSAR. They testified as to their discussions regarding a procedure to arrange for the implementation of GSAR. It is clear from the evidence that proper procedures were followed by the TPS and the D/Chief in this regard. GSAR is a volunteer organization. They have protocols and procedures to ensure the organization is called in following a full assessment of the situation. Once the TPS had a complete assessment of the situation GSAR was deployed. The time it took to complete that assessment and deploy GSAR was not excessive in the Boards opinion.

[36] Once GSAR is involved, the police take a step back and GSAR takes over the search. The job of the TPS, from that point in time, is to assess requests and approve resources for GSAR.

[37] Chief MacNeil and Cst. Heard discussed issuing an EMO alert. Chief MacNeil spoke with Dominic Fewer, Regional Manager of EMO about a helicopter and alert. In the conversation between Chief MacNeil from EMO, the Chief was advised that after Jason Mew from EMO had discussions with his colleagues, they determined that an amber alert was not possible. Chief MacNeil and Mr. Mew discussed the matter further and Mr. Mew agreed to issue a non-intrusive alert.

[38] The evidence reveals the requirement to determine to issue an alert are established by EMO and not TPS. However, they acted within a reasonable time in issuing a non-intrusive alert which was the only option open to them in the situation.

[39] The Board finds that TPS acted reasonably and followed appropriate protocols when determining when to call in additional resources. RCMP, Natural Resources and CN Police were engaged quickly. Once Search and Rescue took over the search, they were provided with any resources needed including the services of the Fire Department, Divers, and when they felt appropriate, the use of other resources. CGSAR were under the direction of Tim Fitzpatrick and they were experienced and well trained in search procedures. Although the complainants feel the resources were not dispatched as soon as they should be, decisions on when and how to use the additional resources were made by those trained in the best way to affect a search, namely GSAR, not TPS.

[40] The complainants question why TFS, Coast Guard and RCMP divers were not called sooner than they were and suggested that TPS committed a default in not doing so. The evidence reveals there was a discussion about contacting GSAR and, as indicated above, we found that to be done within a reasonable and proper time. The evidence we find reveals that once CGSAR is mobilized it assumes the conduct of a search and TPS' role is one of support. Furthermore, the evidence satisfies us TPS granted all requests made of them by GSAR. We are further satisfied from the evidence that at the time and under the existing circumstances, there was no role for the Coast Guard to play in searching for the missing child.

4. TUNNEL VISION

[41] The complainants alleged TPS had tunnel vision and pursued the theory that Dylan drowned early on and to the exclusion of other theories.

[42] Cst. Germaine told the hearing Mrs. Parsons told her that she and Dylan would take walks down by the river because he liked the water. Also, the Lepper Brook and surrounding bush and yard were adjacent to the Parsons' property. The complainants refer to a statement Mrs. Parsons gave to Cst. Taylor on May 6 indicating that neither she nor Dylan knew that water was in that area. However, at the time of the search, the evidence the police had was that he might have gone towards the water.

[43] It should be noted that Mrs. Parsons was not called as a witness at the hearing which might have clarified any questions or evidence either party were concerned about. All that was presented to the Board were statements she made. The Board does not agree with the complainants TPS had tunnel vision in this instance.

[44] There is no doubt that there was an indication Dylan might have gone to the water. However, as was referred to numerous times throughout this decision, testimony indicates that the TPS searched Elizabeth Street, all the yards on the street, they followed up on information and tips, including possible sighting at Kiwanis Park, they checked with businesses, there was a search by helicopter for several days in a wide area surrounding the Parsons' residence. TPS even required Mrs. Parsons' to take a polygraph test.

[45] As of the date of the hearing, TPS advised that the matter is still open, and they are still checking tips which they receive from time to time relative to possible sightings of Dylan. When the TPS found boots in Leaper Brook, they concluded that Dylan fell into, or wandered into the water. The Board finds this conclusion was reasonable given the information they had at that point in the investigation.

[46] Ehler and Brown expressed their concerns to TPS about possible criminality by Mrs. Parsons. The evidence indicated TPS discussed this matter with a Crown Attorney, had Mrs. Parsons take a lie detector test, referred to above. As a result, the Crown Attorney and TPS concluded no charges should be laid against her. On the whole of the evidence presented and the actions of TPS, we conclude that the police did not have tunnel vision as argued by the complainants given the facts and circumstances of the unfortunate disappearance of Dylan. Once again, it must be remembered CGSAR were in charge of the search and TPS's role was one of support.

ISSUES WITH THE INVESTIGATION GENERALLY

[47] The complainants have raised several matters and concerns about the general investigation by TPS surrounding Dylan's disappearance. In their post-trial brief, they have suggested the following:

6. TPS ended the official search too soon.
7. TPS failed to realistically pursue and investigate the prospect of criminality. As a result:
 - a. TPS performed a lackluster investigation into a sighting at Superstore on May 7, 2020;
 - b. TPS performed a lackluster investigation into suspicious activity at 16 Elizabeth Street;
 - c. TPS failed to investigate the nearby Halfway House;
 - d. TPS performed a lackluster investigation of occupants of 321 Queen Street;
 - e. TPS refused to dust the boots for fingerprints; and
 - f. TPS delayed in obtaining DNA for national and international databanks.
8. TPS failed to make appropriate use of K9 search dogs.
9. TPS failed to appropriately follow up on hit by cadaver dog in September 2020.
10. TPS's decision were inappropriately impacted by concerns over using resources.
11. TPS failed to have appropriate oversight over the investigation.

[48] It is understandable that the complainants, as parents of a small child who went missing, would want every possible lead, every possible tip, and every possible area searched and for TPS to act quickly. However, it must be remembered the TPS cannot override the law and they are subject to procedures that must be followed in given situations. This also applies to supporting agencies who are consulted by TPS and who became involved. Police Departments have to follow established procedures. In order for the search to be successful, these procedures must be followed.

[49] There were arial searches which included 18 flight hours. GSAR was fully engaged for six days. The complainants argue that Cst. Germaine should have viewed the actual video at the Superstore where someone reported a sighting of Dylan. TPS questioned the manager who advised the person in the video had a completely different outfit and did not meet the description of Dylan. At the time, everybody was looking for Dylan, he was their main priority and possibly she should have looked at the video but given the response from the store manager and the involvement in the search and urgency to try and find Dylan, we do not find any fault in the procedure followed by TPS.

[50] An important backdrop to this event is that it occurred just six weeks into a state of emergency in Nova Scotia as a result of the COVID-19 pandemic. Lock-downs were a normal occurrence. The complainants argue there was no investigation of a local “halfway house.” The evidence shows that Inspector Smith spoke with the employee at Lavers House, the “halfway house,” and was told that all the residents were accounted for. The employee told Insp. Smith that the house had been on lockdown for weeks because of COVID, including May 6th. This meant no one was able to leave without permission and no one gave permission for anyone to leave. The evidence indicates they were all in the residence following the lockdown order. Rather than take valuable time interviewing every resident of the house, TPS accepted that response. Given the circumstances, the police actions here were reasonable.

[51] Norman Brown, Dylan’s grandfather, testified that a group of searchers and family members saw a man walk down Elizabeth Street on the afternoon of May 6, 2020, carrying a large hockey or duffel bag that looked heavy and he went inside 16 Elizabeth Street. Mr. Brown did not see this person himself. However, he went to 16 Elizabeth Street to investigate the matter himself. He did not report it to the police. Once he arrived at the house he was observed by the Fire Chief who then called the police. The Chief and two police officers attended and knocked on the door of the house. They spoke with the man and looked at the duffel bag which contained laundry. Mr. Brown’s suspicions were also raised because he was told about a hole being dug in the backyard at 16 Elizabeth Street; TPS also investigated this. The complainants argue that the police did not enter and search the house at the time. According to the law, they couldn’t. As explained by Chief MacNeil they would have to acquire a search warrant to get in the home and to obtain the warrant they would need grounds that would satisfy a judge.

[52] The argument that the residents of 16 Elizabeth Street were selling drugs, and so the home could have been entered would also require the police to obtain a search warrant for the home even though they were suspected to be dealing drugs. Again, they would have to gather background information, prepare affidavits and more paperwork. This would result in fewer police officers actively searching for Dylan and take up more time.

[53] Mr. Brown reported a suspicious hole at 16 Elizabeth Street which was investigated by TPS and found not to contain anything that would be relevant to the search for Dylan. There could have been legal complications and requirements of proper authorization to do same. However, the results were obtained in a manner which satisfied TPS there was nothing of relevance to the search.

[54] The complainants refer to the lackluster investigation of the occupants of 321 Queen Street namely, Mrs. Parsons. Once again, it should be noted that neither party called Mrs. Parsons to the witness stand when she could have been examined and cross-examined on the differences between her and the witnesses timeline of events and her activities in general. However, to say the TPS is negligent in this regard is not correct. They investigated the discrepancies in her description of Dylan's boots. We must remember TPS obtained statements from her, had her take polygraph tests and consulted with a Crown Attorney relative to the possibility of criminal charges. As stated earlier in this decision, she passed the polygraph test. Given the amount of activity going on that day, and the circumstances upon which Mrs. Parsons' found herself when questioned by the police and others, it is possible that she could have made a mistake in her recollection.

[55] Without hearing from her on the witness stand to ascertain details under oath, the Board has only statements presented to us as being told by Mrs. Parsons.

[56] Although there are inconsistencies in Mrs. Parsons statements and the complainants make several allegations against her, including one of criminality, they never saw fit to call her as a witness. They could have questioned or challenged her about anything she might have said or done. We are therefore only left with the speculation of the complainants who substitute their judgement for those of the police. The Board is satisfied TPS took steps as described above to find if there was any criminality involving her. The Board finds, on the balance of probabilities, the evidence does not support this allegation. Thus, we find no wrongdoing by the TPS as alleged.

[57] The complainants argue the refusal to dust Dylan's boots for fingerprints was a dereliction of duty by TPS. D/Chief Hearn considered the request and dismissed it because, as an experienced and trained officer, he believed there was no chance a fingerprint on the boots would have resulted in any relevant evidence. Furthermore, the TPS Forensic Identification Officer Det/Cst. Cullip, was present and consulted when the boots were located in the brook. In his opinion, there was no chance of obtaining any evidence by dusting the boots for fingerprints.

[58] Ehler and Brown disagree with TPS' decision relevant to fingerprinting the boots. They argue they had discussions with retired police officers, members of other forces who agreed with them that the boots should have been fingerprinted. They say logically it would have been helpful had the prints been collected. None of these other sources were called to testify as to their opinions regarding the usefulness of fingerprinting the boots. The Board only has the complainants' opinions and hearsay evidence before it regarding this argument. The Board accepts the evidence of experienced and trained police officers in this matter. The same reasoning applies to the obtaining of DNA from the parents and Dylan for the International Data Base.

[59] The complainants argue that Kevin McNeil from Halifax Search and Rescue should have been called. Also, that no records from that agency had been provided. It should be noted as stated earlier in this decision that the CGSAR, once mobilized, were the agency in charge and TPS performed a support function. There appears to be no evidence that CGSAR requested TPS to contact Mr. McNeil or Halifax Search and Rescue. Thus, on the balance of probabilities, TPS cannot be faulted.

[60] The complainants also raised the issue of Mr. Doug Teeft who was with Nova Scotia K9 Rescue. The complainants wanted to have him involved and there were some discussions with D/Chief Hearn about whether or not he should be allowed. It became clear that TPS did not retain or require Mr. Teeft to perform any searching. The complainants requested him once he attended the scene on September 11, 2020. This led to the video referred to in the following paragraph. It is speculation to suggest that TPS should have called Mr. Teeft when, in fact, they had their own dog on site and there was no indication that they needed another dog, nor that CGSAR requested one.

[61] As one reviews the evidence relevant to the use of the K9 search dog Onyx, TPS were in contact with their K9 unit quickly. Cst. Milbury and Onyx arrived at the scene within 30-45 minutes. Cst. Hunka explained the procedure used by TPS in his testimony and he explained why outside K9 units were not called in. We are satisfied there is no evidence to suggest the police did not perform this duty properly.

[62] Likewise, we are satisfied there is no evidence to suggest that TPS should have used a cadaver dog at Salmon River. To an untrained observer, the video taken by the complainants may suggest that the dog found a body at the site. However, the dog's trainer, or owner, was not called to give evidence. The evidence of interpretation of the dog's actions were those of Tom Fitzpatrick, who provided hearsay evidence as to what he understood the dog's actions indicated. Those actions were that the dog had not made a discovery.

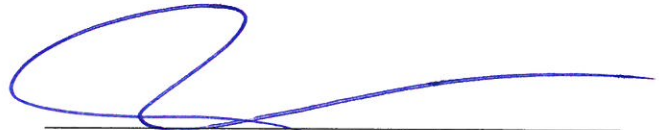
[63] The complainants were critical of Chief MacNeil's role on the day Dylan disappeared. We find Chief MacNeil carried out his duties as "Chief" in a manner expected of him. They were also critical of his use of notes during his testimony. We find that his use of notes, as he gives evidence, was to assist his memory, which is permissible.

[64] There is no doubt May 6, 2020, and the days following were, without question, a devastating time for the complainants, as parents of Dylan Ehler. It was also a difficult time for the TPS and the citizens of the town of Truro. For a child to go missing is a terrible event, especially given the age of Dylan. For the child not to be found is traumatic for the family and indeed for everyone connected to the search.

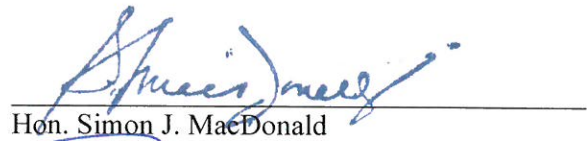
[65] We are satisfied that TPS arrived at the scene as quickly as possible; they acquired the appropriate services within a reasonable time. They followed proper policy and procedure. No resource was denied to CGSAR when they became in charge of the search. We are further satisfied that, given the searching done by the parties, and we point out that of the Fire Department to go into Lepper Brook, which was unusually high and dangerous that day, showed the efforts that were made to try to find Dylan.

[66] The Board appreciates the concern, sadness and disappointment the complainants have with the way things turned out in relation to the search for Dylan. There is always room to second-guess decisions made at the time. However, one must consider the circumstances at the time, and if the actions taken by TPS were reasonable and appropriate. TPS, the complainants say, did not follow every lead that should have been followed nor employed every resource that they thought should have been performed. The Board has to look at the whole situation as an independent third party. Even considering the strong arguments put forth by the complainants, we are satisfied that TPS acted reasonably in initially responding to the report of a missing child and in the subsequent actions investigating the missing child as well as the follow up investigation. It should be noted that TPS have indicated the file is still open, and they are still checking reports of a possible missing child. For the foregoing reasons, we dismiss all of the complainants' complaints.

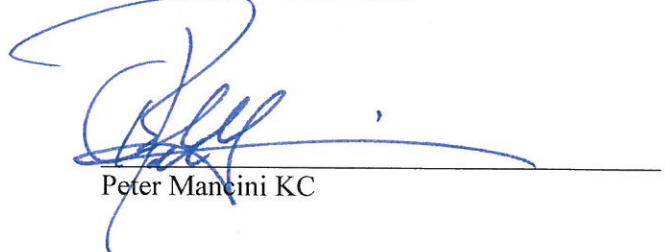
Dated at Halifax, Nova Scotia this 17th day of July 2023.



Jean McKenna



Hon. Simon J. MacDonald



Peter Mancini KC

Distribution: Allison Harris, Carter Simpson, Counsel for Jason Ehler & Ashley Brown
 Charles Thompson & Ashley Dutcher, Burchell MacDougall, Counsel for Truro
 Police Service
 Jean McKenna, Chair, NS Police Review Board
 Hon. Simon J. MacDonald, Vice-Chair, NS Police Review Board
 Peter Mancini KC, Member, NS Police Review Board