

INTRODUCTION

1. The alleged offences arose as a result of a search conducted by Sgt. Michael Adams (“Sgt. Adams”) and Police Service Dog Storm (“PSD Storm”) on February 27, 2002, at the St. John’s Bosco School (“the School”) in the City of St. John’s, NL.
2. Sgt. Adams conducted a search of the corridors and some classrooms in a portion of the School, including, the grade 8 class of Michael Grant. One of Mr. Grant’s students was Samantha Fowler the daughter of the Complainant, William Fowler (“the Complainant”).
3. As a consequence of the search, the Complainant filed a public complaint against Sgt. Adams pursuant to the Royal Newfoundland Constabulary Act, SNL 1992, c. R-17 (“the Act”). The public complaint was dismissed by the Chief of Police. The Royal Newfoundland Constabulary Public Complaints Commission (“the Commission”) referred the public complaint for a public hearing. The hearing took place on March 1, 2, 3, 4, and 5, 2004.

THE ALLEGED OFFENCES AND PARTICULARS

4. The alleged offences are:

“AND WHEREAS pursuant to the Act and the regulations made thereunder, Sgt. Michael Adams, Regimental No. 334, is alleged to have conducted himself in a manner unbecoming a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary by:

- (i) **carrying out his duties contrary to the Policy and Procedures Manual, and in particular Part 1, Chapter B and/or Part 10, chapter J thereof, contrary to Section 3(1)(j) of the *Royal Newfoundland Constabulary Public Complaints Regulations*, C.N.R. 970/96, thereby committing an offence contrary to Section 3(2) of the said Regulations; and,**

(ii) **neglecting or omitting to promptly and diligently perform his duties as a policy officer, contrary to Section 3(1)(d) of the *Royal Newfoundland Constabulary Public Complaints Regulations*, C.N.R. 970/96.”**

5. The particulars of the alleged offences are stated in the following manner:

“That Sgt. Michael Adams, accompanied by PSD Storm, did unlawfully detain Samantha Fowler (a minor) at St. John’s Bosco School, St. John’s, on February 27th, 2002 and did conduct an unlawful search of Samantha Fowler (a minor) at St. John Bosco School, St. John’s, on February 27th, 2002, and did conduct said unlawful search of Samantha Fowler (a minor) without any or any adequate investigation and did fail to advise or ensure that Samantha Fowler (a minor) or her parents were advised of her constitutional rights prior to a search being conducted of Samantha Fowler (a minor) at St. John Bosco School, St. John’s, on February 27th, 2002k, and did conduct Policy Dog Service Unit training in a facility occupied by young persons. “

6. The gravamen of the charges are the allegations of the unlawful detention and subsequent unlawful search of Samantha. As well, the particulars allege a breach and denial of her constitutional rights.

7. As noted, the particulars include an allegation that Sgt. Adams conducted a Police Dog Service Unit training exercise in the School. The Commission’s Counsel, Mr. O’Flaherty, conceded that the evidence did not support this allegation. Resultingly, this charge is summarily dismissed and hereafter I shall restrict my comments to the two remaining charges. These charges being: Charge #1 - Neglect of Duty and Charge #2 - Discreditable Conduct.

THE EVIDENCE

8. The evidence presented was comprised of nine (9) witnesses who gave viva voce evidence (six(6) for the Commission, including the Complainant, and three (3) on behalf of Sgt. Adams, including himself) as well as a number of documents which were entered as exhibits. Included in these exhibits was a statement of Brenda Manning, then the Principal of the School. Ms. Morrissey has re-located and, at the time of the Hearing, was living and working in Ontario. Therefore, she was not able to give her evidence in person. The statement was entered by consent subject to the proviso that consideration be given to the fact she was not available for cross-examination.

Commission Witnesses

#1 - Samantha Fowler

9. Samantha Fowler (“Samantha”) was born on April 14, 1988, and is the daughter of the Complainant. On February 27, 2002, she was a grade 8 student at the School. Mr. Michael Grant was her homeroom teacher.
10. Much of Samantha’s evidence was devoted to describing the circumstance leading up to the search conducted by Sgt. Adams and PSD Storm. In examination-in-chief she testified:

“Q. You were in Grade 8, okay. Now, what I’d like you to do - go ahead. I’d like you to take your time and tell the adjudicator, Mr. Adjudicator, what happened on that day when the police officer and the policy service dog came to school when you in Grade 8?”

A. We were sitting down in our homeroom class. It wasn’t homeroom

time, it was like math or science class. And then there was an announcement on the PA that the RNC were going to come in, a drug search with the police dog or something like that. And then they said for all the students to remain in their classrooms. So Mr. Grant said, like, now you all heard that. So he kept us in our classrooms. And then a few moments later, I don't exactly know how long, the police officer came with the dog and I think it was Ms. Hogan was there and she said for everybody to remain seated. So the dog was, like, going up and down the aisles and he sniffed around Mr. Grant's desk too. He stopped by a student for, like, awhile, didn't sit but he just like sniffed him more than others. And then he went and sniffed, like, the garbage can sometime. Then they went back out. That's pretty much it." (Emphasis added)

11. In Samantha's words, a female teacher (either Ms. Hogan or Ms. Morrissey) "...said for everybody to stay in their seats..." As well, she testified she didn't think the police officer said anything. She testified that the dog passed each student twice and "was close enough to touch". As well, she indicated she was "really scared". She said nothing to either of the teachers present (Mr. Grant and Ms. Hogan) or Sgt. Adams. According to Samantha no one left the classroom during the search.
12. Samantha was questioned during her examination-chief concerning her understanding of whether or not the students could leave the classroom:

Q. Now, when the police officer – from the point that Ms. Hogan came to the classroom with the police officer and the dog what was your understanding about whether or not you were permitted to leave the classroom?

A. **Well, nobody said that we could leave or not, so – and before that we were told to remain in the classroom in the announcement, so I just supposed that we all had to stay there.**

Q. **So that was your understanding, you had to stay there. Were there any exceptions to that?**

A. **I don't think so, because nobody left.**

Q. **Okay. Were any groups of students exempted from that?**

A. **Well, they didn't say on the announcement that, like, anybody could leave or anything.**

Q. **Okay. And after Ms. Hogan spoke to you when she came to the door now, because you've spoken about the announcement, what was your understanding at that point about whether or not you were permitted to leave the classroom?**

A. **Well, she said for everyone to remain in their seats, so same think, I guess, just stay in the classroom, stay in your seat.**

Q. **And were there any exceptions to that direction given at that time by Ms. Hogan?**

A. **Not - no.” (Emphasis added)**

13. When Samantha went home for her lunch she told her father/the Complainant about the search.

14. It must be noted that Samantha testified, on cross-examination, that the dog was on a leash during the search of her classroom. Samantha was unable to provide an estimate of the amount of time necessary to completed the search. She did indicate that Sgt. Adams and his dog proceeded at “normal walking speed”. As well, she testified the dog was “sniffing for drugs” but was unable to indicate if the dog was sniffing at the floor or in the air. She was unable to advise if the dog’s nose actually touched any of the students. As well, she was unable to testify as to the distance between herself and the dog as it passed by her.

#2 - Michael Grant

15. Michael Grant (“Grant”) is a retired teacher. On February 27, 2002, he was Samantha’s homeroom teacher. In addition, he taught her math and science, and possibly social studies.
16. Grant testified that he recalled the search. He noted there was no advance notice. Instead, he was advised by a colleague that a search was to be conducted. He understood the search was to be conducted in the corridor. Later the police officer and dog, accompanied by another teacher, came to search his classroom. It was his understanding that the students were to stay in the classroom “...unless a kid had a legitimate, really, crisis situation, they weren’t going out through the doors.”
17. According to Grant, the police officer introduced himself and the dog and “spoke briefly what the dog was going to do. Kind of went over things.” He went on to state “...I thought he (Sgt. Adams) acted fairly professional as the officer should.” He estimated that Sgt. Adams and his dog “was only in there two, three minutes, anyway, you know, and back out again.” Grant indicated the dog was an adult German Sheppard or a cross breed German Sheppard. He described the search in the following way:

“Q. Okay. Now, can you describe the reaction of the children who were present in the classroom when the dog was brought up and down the aisles, as you’ve said?”

A. Most of them were pretty quiet, some were jittery, some were excited. If the dog hesitate, some where - a few might have laughed, giggling, so mixed emotions from mixed kids.”

He testified that this was the first search at the School during his time there.

18. On cross-examination, Grant testified he had no “first-hand experience” with drugs in the School. In his experience his students generally stayed in their seats during class and only left after asking to do so at an opportune time. As for the search, he knew the police were searching for drugs and “didn’t rule it out” that the classrooms could be searched. He believed the officer was accompanied by a fellow teacher, Sue Emberley. Grant could not recall what she said to the class prior to the search; he surmised that she introduced the officer and the dog. He reiterated that: “I thought it was being handled professionally and the officer seemed professional.” As a result, Grant “kind of relaxed” as he was satisfied “everything (was) under control.” He indicated that Sgt. Adams provided short instructions prior to the classroom search although he was vague on the specifics of those instructions. He could not recall Sgt. Adams telling the students to stay in their seats. However, Grant testified he may have done so. According to him it was “common sense” that the students stay in their seats during the search. When asked about the consequences of a student leaving during the search, Grant responded:

“A. The only consequences is I would ask them first. I mean, you know, being reasonable about it and they have - you know, they had a legitimate thing, well, I would judge then either deal with it myself or if it was in need of further dealing, see the administration.”

19. Grant could not recall the dog touching any of the students or vice versa. He did not recall any student expressing concern about the search of the classroom.
20. On cross-examination by the Complainant, Grant testified that during the search, "...I guess I was in control of those children at that point." He indicated again that he "was satisfied with the instructions the police officer gave to the kids." In his opinion, Sgt. Adams "handled things professionally", including, the search per se.
21. I questioned Grant about control, and he answered that "I was there as the teacher and I guess he was there as the officer" and went on to state no one person had "total control of the situation."

#3 - Leo Vaughan

22. Leo Vaughan ("Vaughan") is the Vice-Principal of the School and held that position on February 27, 2002.
23. He testified that he became aware of the RNC's plan to conduct a "sweep" of the School shortly after 9:00 a.m. on that date. Vaughan testified that he believed the then Principal, Brenda Manning ("Manning"), received a call from the RNC indicating they would be at the School after recess.
24. Vaughan described the School as being a K-12 school, comprised of 4 parts - Primary (kindergarten to grade 3), Elementary (grades 4, 5, & 6), Intermediate or Junior High (grades 7, 8 & 9), and High School (grades 10, 11 & 12). The School was organized so that students of a particular part, i.e. High School, were together and separated from the other students, i.e. Primary. According to Vaughan, this was the first RNC dog search (although he only joined the School staff in 2002). He advised there was no written

procedure or protocol for such a search. Vaughan recalled a public address (“PA”) announcement being made prior to the search. He believes Manning did so, and that, students were advised stay in their classrooms until further notice. Manning asked him to accompany one of the officers (Officer Wellon) to conduct the search in the High School part of the School. As a result, he was not present in the Junior High part of the School during the search of that area by Sgt. Adams. However, he was present at the debriefing after the search. At that time the officers indicated there was no indication of drugs. As well, it was decided that the RNC dog would make a “social visit” to the K-6 classrooms.

25. On cross-examination by Mr. Wicks, Vaughan testified that Manning had received complaints from the parents of younger students about older students using, selling, and buying drugs on school property. As well, teachers had complained of smelling marijuana on older students after recess. He stated there were “serious concerns” about drugs on the School. In his view only a small group (15-20%) of the older students were involved with drugs. As well, there was concern as to how these students might detrimentally affect younger students. Given these concerns, a message had to be sent to those involved with drugs that it was “not wise” to bring drugs into the School. Therefore, the RNC was invited in to conduct a sweep of the School. In his view, the use of the police dogs was a “good deterrent” to those who considered bringing drugs into the School. That afternoon (February 27, 2002), the Complainant called the School to express his dissatisfaction with the search. In addition, Vaughan received calls supporting the RNC search of the School.
26. On cross-examination by the Complainant, Vaughan testified he was not certain if Manning used the word “drugs” in the PA announcement, and he believed she used the word “sweep” as meaning a police officer and dog going up and down the aisles of a classroom in an effort to detect drugs. He indicated he did not consider the School to be an agent of the police, he reiterated the purpose was to “send a message” and to make the School safe for all students. As far as drugs were concerned, he was of the view the

School was “typical” of other high schools in the City. In Vaughan’s opinion, such searches were intended to improve the situation and, in his view, did not constitute any infringement of the students’ rights.

#4 - Colleen Hogan

27. Colleen Hogan (“Hogan”) is a teacher and was on staff at the School on February 27, 2002. As well, on occasion, she acted in an in an administrative role when necessary. On February 27, 2002, prior to the search, she had a free period and, as a result, was asked to accompany Sgt. Adams. She described the officers as “cheerful” and “professional”. She observed the classroom searches and noted the searches were performed quickly, so quickly that she was surprised by the speed. In her opinion the students were to remain seated so as to allow the dog to do its work. According to her, the purpose of the search was to find drugs. She considered this a proactive approach and supports such searches.
28. On cross-examination by Mr. Wicks, Hogan indicated that Sgt. Adams advised her of how the search would proceed. She noted that throughout this time, the police dog was well behaved. She told students not to pet the dogs. She considered this to be a common sense and gave brief instructions to each class prior to the search. Hogan testified that while searching the police dog did not sniff particular students, nor did it stop. Instead, it moved quickly (with Sgt. Adams) to the point where she was “shocked” and “surprised”. Hogan reiterated that such searches were proactive and a “professional approach” to the drug problem by both the School and RNC. In her view, this fostered “safe and caring” schools.
29. As a closing comment, Hogan stated she was impressed with the professionalism of the officers and the dogs. She had no safety concerns, and considered the School Board and RNC to be collaborators in addressing the drug problem.

#5 - Officer Robert John Wellon

30. Robert Wellon (“Officer Wellon”) is a dog handler with the CBSA (“Canada Border Security Agency”). Until recently, he had been with the CCRA (“Canada Customs & Revenue Agency”).
31. Officer Wellon outlined how he and RCMP dog handlers regularly get engaged in ongoing training with the RNC Police Dog Service Unit. In fact, the 3 forces regularly get together to carry out some form of training. On February 27, 2002, Officer Wellon planned to carry out such training. He went to RNC Headquarters and met with Sgt. Adams. Sgt. Adams advised him of the request to search the School. As a result, both proceeded to the School to conduct a search for “soft” drugs.
32. Officer Wellon went on to describe how his dog was trained and how it carried out drug searches. He indicated it was his first search at that particular school although he searched other schools with Sgt. Adams. There was no written protocol for such searches, the RNC was to take the lead, and Officer Wellon was to provide assistance.
33. He outlined that Sgt. Adams indicated he had received a call from the School requesting a search. However, Officer Wellon was unaware of when the request had been made. He proceeded to outline their arrival at the School, their discussion with the staff, and the plan on how the search was to be conducted. It was decided that Officer Wellon would be responsible for searching the High School portion of the School. He recalled that a PA announcement was made but could not recall who made it or what instructions were given. Officer Wellon described how he carried out his search and indicated he did so in the company of a teacher.
34. Officer Wellon gave evidence on how dog searches are conducted in general, and school searches in particular. He indicated he and Sgt. Adams had some discussions before

leaving Fort Townshend, and further discussions at the School. It was not uncommon to finalize the search plans until the officers were at the search location. He advised that he had been involved in approximately 8 other school searches with the RNC, and Sgt. Adams would have participated in six of those searches. Officer Wellon noted he has not participated in any school searches since February 27, 2002.

35. He outlined that after the search he and Sgt. Adams met with the Principal and at least 2 teachers. The officer advised it as a “positive” search (with no drugs located), and then answered a few questions. Before leaving, the officers left some collectors cards and offered to return in the future to perform a demonstration if the School requested.
36. On cross-examination by Mr. Wicks, Officer Wellon noted that February 27, 2002 was a regular joint-force training day. He then outlined in some detail training activities. As well, he outlined his procedure on that day and on school searches generally. He estimated it took about 1 ½ minutes to search each classroom. He noted there was no physical contact by the dog with students nor would he expect any. He noted there was a debriefing after the search. The administration of the School was very positive and he heard no negative feedback.
37. On cross-examination by the Complainant, Officer Wellon, reiterated that Sgt. Adams was the leader of the search. He testified that students should stay in their seats. As well, he testified about his search experience individually and with the RNC. He described his uniform (blue shirt and pants with black belt) and his dog (chocolate Labrador Retriever). Officer Wellon outlined the differences between his dog and the RNC dog (PSD Storm). He advised he never located drugs inside any school but did locate drugs on school property. He advised that no caution was given to the students.

#6 - William Fowler

38. William Fowler, as noted, is the Complainant in this case. He testified that he is Samantha's father.
39. According to the Complainant, he became aware of the search when Samantha came home for lunch on February 27, 2002. She advised him she didn't want to return to school, and was afraid. Samantha outlined to him how the search of her classroom was conducted. He assured Samantha that it was safe to return to school and said he would speak to the Principal. The Complainant testified that Samantha has a fear of large dogs.
40. On cross-examination by Mr. Wicks, the Complainant indicated that this situation had not been dealt with to his satisfaction. In particular, he indicated the School Board hadn't addressed his concerns. He outlined his involvement with School Board personnel in attempting to develop a policy for such searches. As well, he advised of discussions with the Principal and teachers at the School.

Witnesses on Behalf of Sgt. Adams

#1 - Sgt. Michael Adams

41. Sgt. Adams has been a member of the RNC since February 8, 1982. During his career he has been involved in a variety of police duties, including, patrol division, CID, and criminal intelligence. In 1992, he undertook training for the creation of a dog service within the RNC. This training was provided by the RCMP at its training facility in Alberta. The initial training was conducted over a period of 5 months. Upon successful completion of the training he returned to the RNC to take charge of the Police Dog Service. He has continued to serve as a dog handler since that time and, over that period of time, has had 3 dogs (Storm was his second dog and died in 2002).

42. Sgt. Adams outlined in great detail the training that both handler and dog must complete in order to enter service with the Police Dog Service. The training is extensive and ongoing. Annual assessments by RCMP reviewers are required and regular training exercises are constantly being undertaken. By his account, “Storm was a very successful police service dog.”
43. One of the principal functions of police service dogs is to conduct searches, whether it be for an item, a person, or a particular substance (such as drugs). Sgt. Adams testified as to the proper method of conducting searches, including, “cursory” and “systematic” searches. A systematic search is one undertaken in a particular way to ensure that an entire area is thoroughly searched. While a cursory search is less structured and, resultingly, less comprehensive. According to Sgt. Adams the systematic search of a large room should take between 2 and 6 minutes. In addition, Sgt. Adams testified as to the importance of a particular collar to a dog conducting a search for a specific thing, i.e. drugs.
44. According to Sgt. Adams, the Police Dog Service got involved in school searches in 1998. Apparently, this came at the request of the Drug Section, as well as school officials. Over time, the unit became increasingly involved in this area. This is evidenced by some of the exhibits entered at the Hearing. Eventually, this process culminated in a press conference held on December 7, 1998, in which representatives of both the Avalon East School Board (“the School Board”) and the RNC participated. The press conference included senior representatives of both organizations - the CEO of the School Board, and Deputy Chief Oliver of the RNC. The approach met with the approval of school administrators.
45. According to Sgt. Adams, Mr. Bruce Sheppard (a former Vice-Principal of Prince-of-Wales Collegiate) advised that legal authority existed to conduct searches of the schools.

46. As well, Sgt. Adams noted that the administration of numerous schools were contacting him directly and complaining about drug activity. He testified that these were complaints and, as a police officer, he was required to address each and every complaint.
47. Over the ensuing period (1998-2002), Sgt. Adams was involved in approximately 60 school searches, with about 20 of those including searches of classrooms. In each case, the search was initiated by an invitation from the respective school and followed up by a report by Sgt. Adams to his supervisor. Over this period of time Sgt. Adams received “good feedback” from both school officials and students. The only complaint received was that of the Complainant. Since that time, Sgt. Adams has not performed any other school searches.
48. On February 20, 2002, Sgt. Adams received a telephone call from Manning, the Principal of the School. She requested a search. According to her there was a problem with drugs both in the School and on its grounds. Sgt. Adams asked if she wanted to make a complaint and she indicated she did. He discussed the procedure with her and she asked for a search of the Senior High and Junior High (Intermediate) portions of the School. Arrangements were discussed and Sgt. Adams advised he would call her when he was on the way to the School. On February 27, 2002, he called Principal Manning when he was on his way to the School. Upon arriving at the School, he entered with Officer Wellon and spoke to Manning. As a result, he asked Manning to make a PA announcement that a police officer and police dog were in the School to do a search. The announcement was to avoid scaring any of the students. Manning made the announcement. She indicated to Sgt. Adams she wanted to have the corridors, classrooms, and area behind the School searched. Sgt. Adams was to do the Junior High area, while Officer Wellon searched the Senior High part of the School.
49. Sgt. Adams testified that he was accompanied by a female teacher during his search. He put the drug collar on the dog and walked the dog up and down the corridor. After

completing this portion of the search he started with the classrooms. He had the teacher announce his presence to each class, he could not hear what she said as he was outside with the dog in the corridor. Upon entering each classroom he would say “Good Morning”, try to ensure the students were at ease, and proceed up and down the aisles. Before leaving he would make a joke about the teacher as the dog searched the area of the teacher’s desk. All this time the dog was on the 6 foot leash. At no time was there any contact between the dog and any student. In each classroom the students were seated during the search. He testified any student, including Samantha, could leave if they wished. He had no intention of stopping anyone who wanted to leave a classroom. He testified he was not there to detain any of the students. While no drugs were detected in this search, he did detect drugs in other school searches. Sgt. Adams described the search as being “very basic”, not a systematic search. After completing the search, Manning asked him to take the dog to the younger grades for a visit, not a search. By all indications Manning was satisfied with the search. His turn, Sgt. Adams filed the required Case Report. In that Report he characterized the visit as a “deterrent” and noted it was the first at the School.

50. In terms of Samantha, Sgt. Adams he did not know her personally. He admitted to searching her classroom, but had no contact with her other than that. Also, as noted, if she wished to leave she could have done so.

51. In Sgt. Adams’ opinion, he believed he had a legal right to search the schools, including, the classrooms. He based his opinion on Sheppard’s comments, the gravity of the problem with drugs in City schools, and the complaint received from the schools. Also, he testified his belief was supported by his discussions with the Drug Section. In addition, his general discussions with other principals and teachers supported the opinion expressed to him by Sheppard. Sgt. Adams testified that only the Drug Section could lay charges if drugs were located in a school search. He would take no action other than to report his findings to them.

52. On cross-examination by Mr. O’Flaherty, Sgt. Adams testified that a file was generated for each school search. He was referred to a Police Dog Service chart outlining 48 school visits for the 1998-February 27, 2002 period. According to Sgt. Adams, some of the visits were due to complaints from the schools. He noted that this figure may be larger due to searches by the other dog handler, Cst. Tucker.
53. Sgt. Adams went on to state that at no time was he advised by his superior, Insp. Churchill, that classroom searches were illegal. As well, he noted he had ongoing discussions with Insp. Churchill about school searches but could not recall any discussions about searching occupied classrooms; however, it was his belief that Insp. Churchill knew of these searches. According to Sgt. Adams, more senior officers in the chain of command knew about the school search program but were less well acquainted with operational issues than Insp. Churchill. As a result, he could not recall any discussions with these senior officers on the legality of searching occupied classrooms. Again, it was his belief that these senior officers were aware that occupied classrooms were being searched. Sgt. Adams reiterated his belief that these searches were lawful.
54. Sgt. Adams reviewed his actions prior to and during the search at the School. He characterized it as a “basic” search not a “systematic” search. According to him, if a student had left the classroom, someone would have followed them to determine why he/she left the classroom.
55. On cross-examination by the Complainant, Sgt. Adams testified that he had some training in the area of search and seizure. He noted when a school called, the decision to conduct a search was already made, he or Cst. Tucker were there to do perform the search. They did not make the decision to perform it. He repeated his understanding that his superiors, especially Insp. Churchill, were aware that classroom searches were being conducted. He testified that students were not individually searched and the dog did not come in contact with any student during a classroom search. He indicated that Samantha, or any student,

could leave. As well, he insisted that he never told students to stay in their seats. In his opinion, he did not detain any of the students. Sgt. Adams testified that he felt he had reasonable and probable grounds to conduct the search. In this regard he relied upon Manning's complaint, the fact the School was a public building and they had been invited in by the administration of the School, Sheppard's assurance that the administration had the legal authority to allow such searches, and the existence of a drug problem in City schools. As well, until February 27, 2002, he had never received a complaint about such searches. Sgt. Adams testified that he encouraged the school administrators to send out newsletters to parents indicating that the RNC was searching schools.

#2 - Bruce Sheppard

56. Bruce Sheppard ("Sheppard") retired from teaching in 2003. Prior to his retirement, he was Vice-Principal of Prince of Wales Collegiate ("PWC"). As well, he had acted as the Principal of that school. Sheppard recounted his experiences, as an educator, with drugs in City schools. That experience extends back to the 1970s. He indicated that "there is significant percentage that are involved (with drugs) on a day to day basis." He noted that drug use during recess was a very real problem at PWC. In his experience, drug use caused a number of problems in a school setting such as the disruption of the education process, theft of property, and other forms of illegal activity. Sheppard testified that most students and parents do not want drugs in schools, and supported the efforts to eradicate drug use. In addition, he and the PWC administration secured the support of the School Board to address the drug problem.

57. Sheppard testified that in 1998 an attempt was made to secure the assistance of the RNC. This was done with the knowledge and consent of the School Board. As a result, Sheppard took action to develop a joint approach with other schools and the RNC. The purpose of this approach was to take action at addressing the drug problem. On that point Sheppard testified:

“A. Well, I know there was conversations with Sergeant Adams and other police. There was conversations with individuals at the School Board, plus, you know, in our school, Allistrar Dyke, our principal. We also had, you know, phone calls to the principals of the schools, say like Booth and Bishop’s and Gonzaga and so forth, Holy Heart. And from those conversations I know that the problem was common among us. And of course, I think what were looking for, what I was looking for was access, a speedy access to having the police to be able to come into school and to assist us either when we called or on a random basis. And one of things, of course, that I learned at that particular point in time was that the resources available to help were, at best, scarce. You know, Constable Adams and the other people have dogs, and of course, crime happens 24 hours, seven days a week. And we have certain issues and certain problems that occur, you know, almost like clockwork. And we wanted somehow for the Constabulary and the drug and policy dog division to have an awareness that we have a problem and that some priority be given to that problem so that when I call or when someone else calls, then I would hope that Sergeant Adams would be aware that, yes, you know, I should go there, this is part of a process and let’s tackle it as best we possible (sic) can.”

58. Over time the process continued to develop and eventually a press conference was scheduled to provide the public with information on the approach the School Board and RNC were to pursue. In his view, the school administrators enjoyed the legal authority to sanction such police actions:

“A. Oh, without question, you know, from the position of the School Board and the support that we know that we have in our school community, yes. Not a problem there at all. In fact, like I said, you know, these problems build, you know, it starts off at a certain point

in a year and I guess people being people, students the same way, they're testing you and seeing what your amount of savvy would be in terms of what's going on. And if you're lax, this problem can develop quickly. And if you're prudent, which we certainly try to be with supervision in the school and controls by the administrators and so on, you try to keep these situations under control and as far away as you possibly can. So, you know, we know that it still happens because, you know, they work around your schedule and, you know.

Q. Right.

A. And at a certain point in the year you do need a certain amount of help. You know, it's nice for us to know that the Board supports us and

Q. Certainly. And as an administrator what authority did you regard yourself as having in directing what part of a school might have been searched or have the dog introduced to it?

A. Oh, pretty well full authority.

Q. On what basis?

A. Well, what we worked out with the police and what we worked out with the School Board.” (Emphasis added)

59. Sheppard reviewed the correspondence exchanged in 1998 which led to the School Board/RNC press conference on December 7, 1998. He repeated “We had the full support of the School Board.”

60. He testified that he personally participated in at least 6 searches of PWC by the RNC Police Dog Services Unit. Sheppard noted "...we never had any complaints." In fact, there was support expressed to him by students and parents for the RNC searches.
61. On cross-examination by Mr. O'Flaherty, Sheppard again testified as to his authority, as school administrator, to allow police searches. In particular, he responded as follows:

“Q. Okay. In just want you to think about - because those questions will be canvassed by us as to what authority you have, okay.

A. Yeah.

Q. In want you to think, just particularly try to focus right in on my question. If you have a recollection, if that's a present recollection today, can you recall occasions upon which or any occasion upon which you had a specific discussion with Sergeant Adams during which you discussed your authority to conduct searches within the school, can you recall that specifically here today?

A. Now, I've had that discussion with people in the RNC. To say specifically, it's Sergeant Adams, I can't be 100 percent. But I would like to think that I would have, because, you know, I certainly know what my position is in school with being able to conduct searches. And on the phone with a number of people from the drug unit we've had this discussion. And like In said, I'm as sure as In possibly can be without having a tape rolled in to confirm or deny that would have taken placed. (Emphasis added)

62. He went on to discuss in some detail his understanding of his authority to conduct searches (students and the school), as a school administrators, and his recollections of which RNC officers he discussed that authority with. As well, he recounted a search in 1993, 1994 or 1995 in the learning resource centre at Booth Memorial when a police dog searched that room with students present. Sheppard testified that after 1998, he could recall “a full search of the school (PWC)” including “a couple of classrooms”. He could not be certain that he was present when the classrooms were searched.
63. On cross-examination by the Complainant, Sheppard acknowledged the rights of students and parents. As well, he testified he would act in loco parentis if the circumstances required and proceed as “a prudent parent” vis-a-vis the student or students in question. In addition, he outlined his understanding of his authority as a school administrator to sanction police searches. He went on to add that the purpose of the police searches was to improve the environment for learning. Sheppard testified that student safety was one of the primary concerns:

“A. I know right now that every year the problem is worse, okay. And the kids in the school are under, you know, a great threat from the scourge that we have. I’m not sure that the approach is any different. I think that the police may be called upon more often. You may have to, as the police did last year, come up with a difference way of dealing with the problem, a new more modern tool, if you want to look at it that way. But, I don’t think there’s been anything there that would look at taking away the rights of the child in the school.”
(Emphasis added)

According to Sheppard, the RNC served a key role in his attempts to provide a safe environment to his students.

#3 - Inspector Ralph Churchill

64. Ralph Churchill (“Inspector/Insp. Churchill”) is a retired RNC Inspector. In February of 2002, Insp. Churchill was in charge of Operational Support Services which included, among other things, the Police Dog Service.
65. Insp. Churchill testified that at the time, there were 2 dog handlers - Sgt. Adams and Cst. Tucker. Both had several years experience with the unit and he served as their direct supervisor. In March of 2003, there was a reorganization of the RNC and he lost control of the Police Dog Service. During the time he had control of the unit, it was engaged in a variety of activities and enjoyed great popularity with the general public, groups, and children.
66. Due to his position, he was kept abreast of the unit’s activities, including, school searches. In his experience such searches were as the result of a request or a complaint. He noted during the 1998-2002 period there were a number of such searches but he was unable to provide an accurate number. Normally, after a school search, either Sgt. Adams or Cst. Tucker would advise him of the results. This process was a combination of the formal reporting process and an informal discussion. If drugs were found, the Drug Section would be advised. Overall, he testified to receiving positive feedback from parents for the school searches.
67. Insp. Churchill stated that he approved of the school searches and, in his view, the searches were authorized by the school administrators. As a result, he never addressed the authority issue with either Sgt. Adams or Cst. Tucker, nor did either of them raise it with him. He went on to add that he thought it was Sgt. Adam’s duty to undertake such searches when a school made a request.
68. On cross-examination by Mr. O’Flaherty, Insp. Churchill testified that he gave no opinion

(at any time) as to the legality of the school searches. He went on to state the purpose of the searches was to deter drug use and promote education; the purpose was not to lay drug charges against the students. In Insp. Churchill's opinion, police officers should satisfy themselves that any search they undertake is legal.

69. On cross-examination by the Complainant, Insp. Churchill testified that Sgt. Adams informed him that he was involved with classrooms. He advised that he had a "good relationship" with the Police Dog Service and he received both written and verbal reports from Sgt. Adams and Cst. Tucker. In his opinion, the school searches served 2 purposes; (1) to act as a deterrent to those who would bring drugs into schools, and (2) to locate drugs that had been brought into the schools. He testified that he would be concerned if illegal searches were being conducted. In his opinion, the onus was on officers to ensure that they discharged their duties properly.

FINDINGS OF FACT

70. As a result of carefully reviewing the evidence in its totality I am prepared to make the following findings of fact. In doing so, I am of the view that the events of February 27, 2002 cannot be looked at in isolation. It is of the utmost importance to understand the circumstances which led to the search of the School by Sgt. Adams on that date.

The Period prior to February 27, 2002

71. For decades the High Schools in the City of St. John's have had problems with drug use by students. Specifically, the problems relate to the sale and use of drugs on school property or inside schools. However, the problems appear to have escalated in the 1990s. As a result, school administrators, such as Sheppard, found themselves devoting more and more of their time to controlling the problems.

72. It must be understood that, in large measure, school administrators were dealing with the problem in their own schools. That is there appeared to be little, if any, concerted action in dealing with the problem.
73. As one means of coping, school administrators elicited the assistance of the Drug Section of the RNC. Despite that assistance being provided, the problems seemed to worsen over the 1990s. Throughout the early 1990s, Sgt. Adams and other RNC officers were actively involved with school administrators. This activity was largely on a school-by-school basis and was reactive in nature. To his credit, Sheppard realized that each school was facing the same problem (some more than others) and a unified effort was required to deal with the drug problem. Therefore, he organized a meeting of school administrators and the RNC on October 27, 1998. Sgt. Adams was asked to attend and he did. On October 28, 1998, Sheppard wrote to Brian Shortall ("Shortall") the Director of the School Board, he stated (in part):

“Following a brief welcome and introductions, Sergeant Adams outlined his ideas. He envisages 4 to 5 random checks of each school; these may not be of the whole school but possibly partial checks. Each school will be notified before a visit and the administration will have input into the nature of the check. Some emphasis will be on the lockers, the searching areas, the fields and woods nearby and classrooms. He outlined the protocol to be followed if the dogs indicate drugs, this protocol was acceptable to all and is the same that has been followed in the past.” (Emphasis added)

Sheppard went on to add that it was important for “the community to know that we were active in the fight against drugs and to warn the users and pushers that they can’t use and deal without possible consequences.”

74. Efforts continued throughout the fall of 1998 to formalize this initiative. Finally, a Press Conference took place on December 7, 1998. The Press Release stated (in its entirety):

“R.N.C. POLICE DOGS USED TO EDUCATE STUDENTS ABOUT DRUGS”

St. John’s - December 7, 1998 - A unique approach is being used in drug sniffing police dogs to help educate students in high schools. The Royal Newfoundland Constabulary has joined with the Avalon East School Board to introduce a new approach that will focus on education and prevention.

Members of the RNS police dog service have met with school officials and principals to address the concern in addition to visiting the schools to speak with the students about the dangers associated with drugs, RNC dog handlers and their partners. Storm and Jery will be doing periodic searches of various high schools in the RNC Northeast Avalon policing jurisdiction. In recent weeks, RNC police dogs have visited six schools and in two incidents a small quantity of marihuana was found.

Mr. Brian Shortall, CEO/Director of Education for the Avalon East School Board stated. “We are extremely pleased to be working together with the RNC on this joint initiative. Parents and students alike should be aware that any time schools may be searched by RNC dogs. This move has already been welcomed by those students who see the benefit of keeping this problem out of our schools and educating them about the harmful effects of drugs”.

Meanwhile, Deputy Chief Oliver of the RNC explains. “We often receive requests from schools for our police dogs to visit and meet with the students. This proactive approach is intended to educate students while at the same time send a message that illegal activity will be tolerated. This is another example of what community policing is all about and we welcome the

opportunity to work with schools to address problems as they are identified.”

(Emphasis added)

75. For the 1998-February 27, 2002 period, Sgt. Adams and Cst. Tucker, in conjunction with the School Board and school administrators, engaged in searches at City High Schools. The searches were made as the result of a request or complaint from a particular school. If drugs were located, the Drug Section was advised and its members dealt with the laying of charges. By all accounts, the joint initiative seemed to be working well and enjoyed the support of students and parents.

February 27, 2002

76. On February 27, 2002, Sgt. Adams had a scheduled training day and intended to spend the time with Officer Wellon. Both of them were concerned with continuing to work on skills with their respective dogs. I find as facts that Sgt. Adams was and is a highly trained and experienced dog handler and that PSD Storm was equally capable of performing in a wide variety of situations. Given the importance of this ongoing training, it is evident that the RNC places a high priority on the Police Dog Service. As well, by all accounts, including the evidence of Insp. Churchill, that unit has performed very well over time and enjoys an excellent reputation with the general public.
77. Sgt. Adams had been contacted by Manning, the Principal of the School, who requested a search. Sgt. Adams agreed to do a search. Therefore, he secured Officer Wellon's assistance (as he had before), and left to search the School. In accordance with his practice, he called Manning before he got to the School. When he got there he met with Manning and other teachers. As it was the first search of the School, he took time to advise them of what would happen and provided assistance to them. Manning instructed him to search the corridors, some of the Junior High and Senior High classrooms, and the School property. In accordance with Manning's instructions, Sgt. Adams decided to have

Officer Wellon search the High School portion of the School while he would search the Junior High part. A teacher would accompany each officer and Manning made a PA announcement advising students and teachers that a search was being undertaken by the RNC.

78. As it was the School's first search, the process was new to the administration and teaching staff. However, the PA announcement did serve as notice that students were to stay in their classrooms while the search was ongoing. In addition, the teacher's accompanying the officers gave an announcement on a class-by-class basis prior to the classrooms being searched. Students were told to stay in their seats and not interfere with the dog (or its handler) as they went through the classroom. By all accounts the search was conducted efficiently and professionally with no drugs being found. I find that Grant's classroom was searched in between 2 and 4 minutes and there was no physical contact between PSD Storm (or Sgt. Adams) and any of the students. The search was done by the dog and officer walking up and down each aisle. I find that Sgt. Adams conducted himself in an appropriate manner prior to, during, and after the search of Grant's classroom.
79. Before leaving the School, and at Manning's request, Sgt. Adams agreed to visit the young students to allow them an opportunity to see PSD Storm. As well, he and Officer Wellon distributed collector's cards to some of the younger students.
80. After reviewing all of the evidence I find that at no time were any of the students of the School in danger from either of the dogs. By all accounts both dogs were highly trained. Their handlers were in complete control of their dogs, and to their credit, the students conducted themselves well. If there had been any concerns I am certain that the members of the teaching staff (Grant, Vaughan and Hogan) would have indicated such to me.
81. It is on the basis with these facts that I turn now to the issue presented in this case.

ISSUE

82. Stated in its simplest form, the issue is whether Sgt. Adams is guilty of the offences with which he is charged?
83. In addressing the issue, one must be cognizant of the particulars of the alleged offences and their relationship to the charges.

ANALYSIS

Role of Adjudicator

84. Section 31 of the Royal Newfoundland Constabulary Act, SNL 1992, c. R-17 (“the Act”) states:

“31. (1) An adjudicator has the powers of a commissioner appointed under the *Public Inquiries Act*.

(2) An adjudicator shall conduct a hearing without undue delay to inquire into the matter referred to him or her and shall give full opportunity to all parties to present evidence and make representations, in person or through counsel.” (Emphasis added.)

85. The matter referred to me in this case for determination is whether or not Sgt. Adams has “conducted himself in a manner unbecoming a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary”. In assessing Sgt. Adams’ conduct, it is submitted by the Commission Counsel that I must determine if he “unlawfully” detained and searched Samantha on February 27, 2002 while conducting the search of her classroom. In addressing the issue in this case, I am mindful of the fact that I am not a

judge hearing a criminal or drug charge. Different considerations apply to me as an adjudicator under the Act than apply to a judge of a court of competent jurisdiction hearing a criminal or drug charge.

Charge #1

Sgt. Adams is alleged to have carried out his duties contrary to the Policy and Procedure Manual, and in particular Part 1, Chapter B, contrary to Section 3(1)(j) of the Royal Newfoundland Constabulary Public Complaints Regulations, CNR 970/96, thereby committing an offence contrary to Section 3(2) of the said Regulations.

86. Part 1, Chapter 8 of the RNC Policy and Procedure Manual is entitled “Search & Seizure”. It contains a significant amount of information relating to that topic. For the purposes of this case, the relevant portions are as follows:

“1. General:

- a. Members conducting searches must comply with legal, constitutional and case law requirements.**
- b. Section 8 of the Canadian Charter of Rights and Freedoms states, “Everyone has the ;right to be secure against unreasonable search and seizure”.**

2. Effect Of An Unlawful Search:

- a. Depending on the circumstances of each case, an unlawful search may give rise to one or more of the following consequences:**

- (1) criminal action for assault;**
- (2) a civil action for trespass, false arrest and/or breach of Charter rights;**
or
- (3) police disciplinary sanctions (internal or public complaint discipline process).**

b. Depending on the circumstances of each case, an illegal search may also affect the future prosecution of the matter which is the subject of the investigation in one of the following ways:

- (1) At the discretion of the Court, evidence obtained as a result of the illegal search may be excluded; or**
- (2) The court may order any other remedy which it considers appropriate pursuant to Section 24(1) of the Charter of Rights and Freedoms.**

(c) In addition, citizens are entitled to use as much force as is reasonably necessary to prevent unlawful searches of their person, place or things. Such resistance will not constitute an assault, resistance, or obstruction unless the resisting force is unreasonable.

9. Search Conducted With Consent:

a. Lawful rights against search and seizure may be waived in some cases, for example, a suspect can give a member permission to search his/her person, home, car, effects, provide samples for DNA analysis, etc. but this waiver will not be valid unless it is given voluntarily by a person having the necessary legal authority to make such a disposition. Thus, without restricting the generality of the foregoing, the following points must exist for a search by consent to be lawful:

- (1) there was consent, express or implied;**
- (2) the consent giver had the authority to do so (i.e. consent given by someone in apparent occupation or control of the vehicle or premises);**
- (3) the consent was voluntary (i.e. not the product of police coercion or other conduct that negated);**
- (4) the consent giver was aware of the nature of the police conduct to which he/she was being asked to consent;**
- (5) the consent giver was aware of their right to refuse the police request; and**
- (6) the consent giver was aware of the potential consequence (i.e. any item seized could be used in evidence against them) of giving consent.**

Note: It is advisable in such instances that the consent be obtained in writing if at all possible. In this way there is a clear record of what the consent giver was advised of at the time consent was given.

12. General Search Procedures:

a. Because of its extraordinary and sensitive nature, persons and/or their property shall not be searched unless:

- (1) It is carried out strictly in accordance with the law;**
- (2) It is based upon reasonable and probable grounds;**
- (3) The extent of the search is not only authorized by law, but is also reasonable under the circumstances;**
- (4) In the case of an intensive external body search, it is carried out in privacy by a member of the same sex as the person being searched and, where the person being searched is female, with the knowledge of and on the instructions of a supervisor;**
- (5) In the case of an intensive internal body search, involving a physical examination of anal and/or sexual orifices, it is carried out by**

a physician assisted by a member of the same sex as the person being searched, on approval of the Officer in Charge of the Section involved or in the case of a Controlled Drug or Substance search, on approval by the NCO in Charge of the Street Drug Unit in consultation with the Officer in Charge of the Criminal Investigation Division;

(6) It is carried out with as little force as necessary under the circumstances;

(7) Officers give warning in executing warrants before forcing entry:

(a) by knocking or ringing door bell;

(b) announcing that they are police officers; and

(c) stating the reason for being there.

(8) In the case of a *Controlled Drug or Substances Act* search the warning in 7 (i) may not be applicable if there is a fear of the destruction of the controlled drug or substance. 7(ii) would be then done as entry is being gained.

b. Search Procedures pursuant to the *Controlled Drugs and Substances Act*:

(1) Due to the nature of Drug Enforcement duties, and the fact that physical contact is frequently encountered, it is mandatory that all drug investigations be conducted with the utmost care and professionalism.

(2) Before any search is conducted, the investigator must first establish reasonable and probable grounds that illicit drugs or substances, by means of or in respect of which an offence has been committed, are present. Mere suspicions are not adequate grounds to conduct a search.

(3) Section 11 of the *Controlled Drugs and Substances Act* sets out the powers of a Peace Officer regarding search and seizure.

- (4) Members may conduct forcible mouth searches where it is reasonable and necessary to do so.**
- (5) In mouth searches, a throat hold to prevent swallowing is permissible, however, any other violent action to induce vomiting or not actually connected with the act of seizing is not acceptable.**
- (6) When conducting investigations involving small amounts of cannabis, members should not resort to the investigative techniques used in the investigation of offences involving heroin or similar drugs. Seizing a person by the throat or subjecting suspects to an internal or external intensive body search will normally be considered excessive. If members do resort to these investigative techniques, they must be prepared to justify their actions.**
- (7) Members should refrain from seizing money, vehicles or other articles not related to the offence nor needed for investigative purposes.**
- (8) Each contemplated seizure of a conveyance under Section 11 of the *Controlled Drugs and Substances Act* should be carefully considered, having regard to the value of the vehicle, and the expected sale value after disposition of charges. In general, a conveyance should not be seized unless controlled drugs or substances have been concealed in the vehicle and it is being used to transport the controlled drugs or substances.**
- (9) To ensure that an untimely search or arrest does not endanger an undercover agent or interfere with an in-progress drug investigation, major drug investigation, under cover buys, or the execution of a warrant, the search of drugs shall not be undertaken by any member without the involvement of the NCO in charge of the Street Drug Unit in consultation with the Officer in Charge of the Criminal Investigation Division. Members of the RNC Street Drug Unit can be**

contacted through their office or at their residence after working hours.”

87. Under paragraph 1(a), RNC members “conducting searches must comply with legal, constitutional and case law requirements.” Paragraph 1(b) outlines Section 8 of the Charter: “Everyone has the right to be secure against unreasonable search and seizure.”

88. The Policy goes on (paragraph 2 (a)(3)) to state:

“Depending on the circumstances of each case, an unlawful search may give rise to one or more of the following consequences:

(3) police disciplinary actions (internal or public compliant discipline process). (Emphasis added.)

89. Under paragraph 2(b)(1), it is noted that, “evidence obtained as a result of the illegal search may be excluded”.

90. The Policy addresses in depth the relevant statutory provisions for the granting of search warrants, and situations where a search without warrant is acceptable.

91. Paragraph 9 is entitled “Search Conducted With Consent”. Under that provision, a search is lawful despite the absence of a warrant or other authorization, if consent is given. The paragraph then enunciates 6 points which “must exist for a search by consent to be lawful”. I will address this provision further within this Decision.

92. The last provision is paragraph 12 entitled “General Search Procedures”. It states, inter alia, that any search (of persons and/or their property) is to be “carried out strictly in accordance with law”, “based upon reasonable and probable grounds”, and the “extent of

the search is not only authorized by law, but is also reasonable under the circumstances.”

93. It must be noted the Policy recognizes, inter alia, the “legal, constitutional and case law requirements” which apply in search and seizure situations. Also, as a member of the RNC, Sgt. Adams was required to comply with it. It is within the context that Sgt. Adam’s conduct must be assessed.

Submissions

The Commission

94. The Commission submits that Sgt. Adams did “conduct an unlawful search of Samantha Fowler (a minor) at St. John Bosco School, St. John’s, on February 27, 2002”, did “conduct said unlawful search of Samantha Fowler (a minor) without any or adequate investigation”, and “ did fail to advise or ensure that Samantha Fowler (a minor) or her parents were advised of her constitutional rights prior to a search being conducted of Samantha Fowler (a minor) at St. John Bosco School, St. John’s.”
95. As well, the Commission submits the search was contrary to Section 8 of the Charter. Therefore, the search was unlawful and Sgt. Adams was in breach of the Policy.

Sgt. Adams

96. Simply stated, Sgt. Adams’ position is he did not search Samantha, or in the alternative, if what he did constituted a search, it was reasonable.

Disposition

97. In assessing Sgt. Adams' conduct, I must be mindful of the evidence in its totality. As previously stated, it is my finding that he acted in an appropriate manner. That is to say that he held a bona fides or honest belief that he was conducting a lawful or legal search of the School.
98. Neglect of duty is not an absolute offence: "Legal Aspects of Policing", Paul Cayssens, Earls court Legal Press, 2002, page 6-51. Therefore, in order for the charge to be made out, the adjudicator must be satisfied that at least some degree of wilfulness is present or the officer acted with a significant degree of default. Based upon the facts of this case neither circumstance is present. To the contrary, Sgt. Adams acted in an open manner and with the support of his superiors, teachers, school administrators and the School Board. He was merely part of a larger process involving both the RNC and educators. He did not design the process. His role was to respond to requests from individual schools for assistance in addressing the drug problem each of them faced. To find him guilty of this offence would require a selective approach to the evidence. When viewed in its entirety, the evidence clearly indicates that Sgt. Adams was of the opinion and belief that he was reasonably and lawfully discharging his duties.
99. As noted, I have been urged to address the legality or constitutionality of the search. Given my finding of a bona fides belief on Sgt. Adams' part, such an analysis is, at least to a large degree, unnecessary. However, I am compelled to address the following points:
1. An adjudicator under the Act is not in the same position as a judge hearing a case involving a charge under either the Criminal Code of Canada or Controlled Drugs and Substances Act.

2. An adjudicator is, as noted, “to inquire into the matter referred to him or her”. In other words, to determine if the charge or charges alleged against the member has or have been substantiated on the balance of probabilities.
 3. A judge conducting a trial on a criminal or drug charge is to determine if the Crown has proven beyond reasonable doubt the charge or charges laid against the accused.
 4. Different considerations apply in each situation. However, as part of the trial process, a judge must, at least in some cases, address the legality or constitutionality of searches. Such a determination is necessary in order to ascertain if specific evidence is admissible against the accused.
 5. It would be presumptuous (at the least) for an adjudicator to proffer an opinion, in the context of the public complaint process, as to the constitutionality of school searches in general and, in particular, classroom searches.
 6. Any such finding would have little, if any, value as it is not binding on any court. Therefore, in large measure, the exercise is little more than speculation on the adjudicator’s part. Consequentially, the matter before me is best decided on the basis I have outlined in this Decision.
100. In this case, Sgt. Adams’ conduct must be carefully considered in terms of the RNC Policy and Procedure Manual. Upon doing so, it is noteworthy that paragraph 9 (“Search Conducted With Consent”) provides that a search conducted with consent is lawful. The paragraph outlines the criteria which must exist for the search to be lawfully conducted. Bearing in mind the circumstances which existed prior to February 27, 2002, it is my finding that Sgt. Adams held the reasonable belief that the school searches were

conducted with the consent of the school administrators and, as a result, were lawful. This belief is in very large measure rooted in the understanding he had as to the authority of school administrators. It is clear from the evidence that his understanding was shared with other witnesses, most notably, Sheppard. Therefore, it is my finding that Sgt. Adams' belief was in keeping with the weight of the evidence.

101. It must be noted that paragraph 2(a)(3) of the Policy that an unlawful search “may give rise to... police disciplinary sanctions”. In my view, each case must be assessed on its own facts. There are numerous cases when evidence has been determined to be inadmissible due to Charter considerations and no disciplinary sanctions were contemplated let alone imposed. The courts regularly exclude evidence due to a violation of the accused's Charter rights. However, it is not automatic that disciplinary sanctions should follow. In other words, one does not, as a matter of course, follow the other.
102. The particulars of the alleged offence also include the allegation that Sgt. Adams detained Samantha, conducted a search of her without adequate investigation and failed to advise her of her constitutional rights. Again, the evidence in its totality does not support these allegations.
103. According to the teachers' evidence, they were instrumental in ensuring the students remained seated in their classrooms. As noted, Samantha's homeroom teacher, Grant, testified that no one person had “total control of the situation”. He indicated he “was there as the teacher” and Sgt. Adams “was there as the officer”. Therefore, the joint initiative was present at the classroom level as much as it was at the School Board/RNC command level. I can only conclude that it was, as much as anything, an exercise of the teacher's parentis powers in keeping the students at their desks during the classroom search (as it was in authorizing the search in the first place). According to Grant, he could not recall Sgt. Adams instructing students to stay in their seats. Also, Grant indicated it was only “common sense” for the students to remain seated during the time

Sgt. Adams and PSD Storm were searching the classroom. However, Grant testified that he, not Sgt. Adams, would assess any student's request to leave during the search and, if necessary, consult with the administration not Sgt. Adams. Finally, there is Sgt. Adams' evidence that he had no intention of stopping any student from leaving the classroom and that he was not there to detain students.

104. As noted, the search was due to a complaint received by Sgt. Adams from Principal Manning. That complaint was but one of many to which he responded. Also, by conducting the search, Sgt. Adams was, in fact, investigating the complaint. Resultingly, in that context, Sgt. Adams' behaviour was both reasonable and appropriate.
105. The evidence discloses that neither Samantha nor any of the other students were advised of their constitutional rights. It is equally clear that none of the students were subjected to a search of their person. Instead, the dog using its exceptional oldfactory sense, searched the air in the classroom in which the students were seated. Obviously, if the dog detected drugs, the Drug Section would be advised. Furthermore, the privacy interests of students were respected, by both the school administrators and RNC. According to Sheppard, lockers would only be opened with the consent of a student. In addition, there were no evidence to suggest that the RNC ever searched the person of a student during any of the school searches conducted in the 1998-2002 period. Therefore, it would appear that neither the RNC members nor the school administrators believed that there was any necessity of advising students of their constitutional rights. That belief appears to be in keeping with the weight of the evidence in the instant case.
106. In summary, I find on the basis of the evidence in its entirety, that Sgt. Adams's conduct did not constitute a violation of the RNC Policy and Procedures Manual. Resultingly, Charge #1 is dismissed.

Charge #2

107. **Sgt. Adams is alleged to have neglected or omitted to promptly and diligently perform his duties as a police officer, contrary to Section 3(1)(d) of the Royal Newfoundland Constabulary Public Complaints Regulations, CNR 970/96, thereby committing an offence contrary to Section 3(2) of the said Regulations.**

108. Section 3(1)(d) of the Royal Newfoundland Constabulary Police Complaint Regulations states:

“3. (1) A police officer shall not conduct himself or herself in a manner unbecoming to a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary, which shall include but not be limited to the following:

(d) neglect or omit to promptly and diligently perform his or her duties as a police officer”.

Submissions

The Commission

109. The Commission submits that an objective test is to be employed in assessing an officer’s conduct in the case of a discreditable conduct charge.

Sgt. Adams

110. Counsel for Sgt. Adams submits that a discreditable conduct charge requires either “an element of wilfulness” or a substantial “degree of neglect”. He submits that neither requirement is present in the instant case. Further, he submits that Sgt. Adams acted in a good faith and, if anything, laboured under an honest mistake. He also goes on to submit that Sgt. Adams’ conduct was not “liable to bring discredit upon the Royal Newfoundland Constabulary”.

Disposition

111. The offence of discreditable conduct is a rather all encompassing one. In effect, it applies when a police officer’s conduct is of such a nature that it brings discredit to the police force of which he or she is a member. The conduct may be criminal in nature. Or, the conduct could involve activities such as inappropriate behaviour in court, inappropriate responses to specific situations, harassment, or cheating.

112. In Girard v. Delaney (1995) 2 PLR 337 (Ont. Bd. Inq.) the Board of Inquiry, proceeding under the Police Services Act, engaged in an analysis of what constitutes discreditable conduct. After reviewing a number of decided cases, the Board concluded:

“Rather than making the difficult choice of which among these approaches is appropriate for our case, we have combined elements from each and arrived at the following principles:

- 1. The test is primarily an objective one.**
- 2. The Board must measure the conduct of the officer by the reasonable expectations of its community.**

- 3. In determining the reasonable expectations of the community, the Board may use its own judgment, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprized of the circumstances of the case.**
- 4. In applying this standard the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time.**
- 5. Because of the objective nature of the test, the subjective element of good faith (referred to in the Shockness case) is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.”**

113. It must be noted that both Counsel accept the Board of Inquiry’s reasoning in Girard as being as proper statement of the law in relation to this alleged offence.

114. It is evident that, to a large degree, the benchmark by which the officer’s conduct is to be measured is “the reasonable expectations of the community”. However, the question becomes how is the benchmark determined? In the instant case there was no evidence per se as to “the reasonable expectations of the community”. Instead, the evidence was of an antidotal nature whereby certain witnesses, i.e. Sheppard and Insp. Churchill, testified as to receiving positive feedback from parents and students concerning the school searches. Therefore, it is incumbent upon me, as the adjudicator, to determine the expectations of reasonable people in the community.

115. In assessing Sgt. Adams' behaviour on February 27, 2002, and measuring it against the reasonable expectations of the community, I am mindful of the following:

- (1) For the period 1998 to February 27, 2002, the RNC Police Dog Service conducted between 48 and 60 school searches in St. John's.
- (2) There were no complaints before the complaint made in this case.
- (3) The RNC and School Board were engaged in a "joint initiative" and the December 7, 1998 Press Release stated "that at any time schools may be searched by RNC dogs."
- (4) Sgt. Adams searched the School on February 27, 2002 after being asked to do so by Principal Manning.
- (5) The search was conducted (according to the teachers who witnessed the search) in a "professional" manner and at no time was there any concern for the safety of students.
- (6) There is no indication that the Policy Dog Service was primarily concerned with finding drugs to lay drug charges. To the contrary, the focus of the initiative was (according to Deputy Chief Oliver in the December 7, 1998 Press Release) "to educate students while at the same time send a message that illegal activity will not be tolerated." This view was shared by school administrators and teachers, including, inter alia, Vaughan and Hogan.

- (7) The searches were the manifestation of the school administrators' and School Board's attempts to control drug use on school property and in schools in order to provide a safe environment for education. The educators primary responsibility was to their students. By engaging in the joint initiative with the RNC, they were endeavouring to discharge that responsibility. Therefore, any assessment of either Sgt. Adams' conduct or the larger scheme must be considered from that perspective.
116. Resultingly, Sgt. Adams, by searching the School on February 27, 2002 was, for all intents and purposes, responding to a persistent and worsening problem. As noted by Insp. Churchill, Sgt. Adams had a duty to respond to complaints, including the complaints of school administrators. He was not acting in an irresponsible or capricious manner. His actions were, in the final analysis, a response to those persons who were required to address the best interests of their students.
117. Therefore, after a full review of the circumstances preceding the search and the search itself, I am satisfied that Sgt. Adams' conduct on February 27, 2002 was such that it would be consistent with the reasonable expectations of the community. As well, and as previously stated, I am satisfied that he acted in good faith throughout the time he conducted school searches.
118. In summary, I find on the basis of the evidence in its entirety and after a review of the applicable principles, that Sgt. Adams' conduct did not constitute discreditable conduct, and Charge #2 is dismissed.

ADDITIONAL OBSERVATIONS

119. I would be remiss if I were not to make note of the significance of this case. It is, in many respects, a classic example of the conflict between individual and collective interests. Samantha, like anyone else in Canada, enjoys a variety of rights, including, Charter rights. Students have a right to a safe and nurturing environment in which to learn and develop. Educators have a duty to educate and serve the best interest of their students. Drugs have the effect of introducing disruptions and, in some cases, danger to the educational environment. This cannot and must not be allowed to occur. To combat this situation school administrators sought the assistance of the RNC. Together the two organizations attempted to control the drug problem, and, in turn, ensure that students were provided with the proper setting for their education and development.
120. On the basis of the evidence it is clear that some progress was made. It is equally evident that the RNC acted with a keen appreciation of the rights of students. There is no indication whatsoever of any confrontations, physical contact, or other such incidents between RNC officers and students. While the students were asked, by the school administration and/or teachers, to stay at their desks, there was no evidence of detention by RNC officers, including, Sgt. Adams.
121. While the Complainant feels very strongly that his daughter has been wronged, I cannot accept the submission that Sgt. Adams' actions constituted misconduct.
122. Upon reflection it would appear that the Complainant places a very high priority on individual rights. He has every right to do so. However, school administrators and teachers must be concerned with the collective interests of their students. The Complainant does not agree with the approach taken by the School Board and RNC. Again, he has every right to express his disagreement. However, in discharging his duty, Sgt. Adams had an obligation to act on complaints and follow the orders of his superior

officers. He did so. His actions do not amount to misconduct.

123. In the final analysis, both the Complainant and Sgt. Adams have been overtaken by circumstances they did not create. Both impress me to be people of integrity and principles. However, as an adjudicator, my duty is to ascertain if a member is guilty of misconduct. While I may subscribe to the Complainant's view as to the significance of individual rights, for the reasons previously stated, I cannot agree with his submission that Sgt. Adams is guilty of misconduct as a consequence of the February 27, 2002 search of the School.

RECOMMENDATIONS

124. Section 35 of the Royal Newfoundland Constabulary Act empowers adjudicators to “make recommendations respecting matters of concern or interest to the public relating to police services”.
125. After considering this case, and the larger context, I would make the following recommendations:
- (1) The Department of Justice provide such legal advice as is necessary to the RNC and/or School Board to assess the constitutional issues associated with the searching of schools, including occupied classrooms, by RNC officers.
 - (2) If, in the opinion of the Department of Justice, such searches do not offend the Charter, a policy be developed by the RNC and included in the RNC Policy and Procedures Manual setting out the steps to be taken in conducting such searches.

CONCLUSION

126. In conclusion, I therefore find that, pursuant to s. 33(1)(c) of the Act, Sgt. Michael Adams conducted himself in a proper manner and shall be compensated for reasonable costs incurred by him as a result of the investigation and Hearing.

DATED at Bay Roberts, Newfoundland and Labrador, this day of August, 2004.

William G. Morrow, Q.C.
Adjudicator