

**IN THE MATTER OF** s. 30(2) of the  
*Royal Newfoundland Constabulary Act 1992*  
(the “Act”)

-and-

**IN THE MATTER OF** the public  
complaint of Joseph Leo Wall dated  
the 10<sup>th</sup> day of January, 2002 against  
Cst. P. Davis, No: 462

## **DECISION**

1. The Complainant, Joseph Leo Wall, filed a public complaint with respect to the conduct of Cst. Paul Davis, the substance of which is set forth in Mr. Wall’s Affidavit dated January 8<sup>th</sup>, 2002, as part of his January 10<sup>th</sup>, 2002 Complaint, which bears file # 02-2082.
2. The substance of the alleged offence is that “Cst. Paul Davis did compel, enforce, or arrange, against the will of Joseph Leo Wall, the payment by Joseph Leo Wall to David Porter and/or Dale Baker of St. John’s, the sum of \$100.00 by means of the express or implied threat of criminal proceedings being commenced against the said Joseph Leo Wall”.

### **Direct Evidence of the Complaint**

3. The *viva voce* evidence heard on June 17<sup>th</sup>, 2004, started with the Complainant who testified that a neighbor told him that a tow truck was coming to take his 1991 Chevrolet Suburban from where it was parked on Bay Bulls Road in St. John’s. Mr. Wall said that when he went out to the back of his property he saw a tow truck about to hook his Suburban up for towing purposes. He said that the Towing Company

employees told him that his vehicle was being repossessed because he owed \$2,400.00 on it. Some argument ensued with Mr. David Porter and Dale Baker, who were in the tow truck.

4. The Complainant admitted to being very upset and in his direct evidence said that he reached up for the Towing Company employee's hand because he did not want to be hit on the head with a wheel wrench. His hand came down with a cell phone in two-pieces. He then threw both parts of the phone in the woods.
5. By his account, members of the Royal Newfoundland Constabulary (RNC) then arrived on the scene, with Cst. Davis being the first.
6. Mr. Wall's evidence is that he insisted on charges being laid against the Towing Company and related that Cst. Davis told him that he had to pay \$100.00 for the cell phone or charges could be laid against him. He also opined that he thought that the Royal Newfoundland Constabulary was involved with car thieves.
7. After discussions with Cst. Davis, Mr. Wall said that he went to a money machine nearby, got \$100.00 and gave it to the Truck Operator. The Police left. Mr. Wall said that he worried about "a bullet through my head and a rope around my neck".
8. The next day the Complainant went to RNC Headquarters with his Court documents regarding litigation centering on his loan and the civil action relating to the Suburban. He saw a Cst. Pike there who told him that it was a civil matter.
9. Since this incident Mr. Wall stated that he has gotten a number of tickets from the Police and another RNC member tried to murder him.

### **Cross Examination of the Complainant**

10. Mr. Wall told Mr. Mark Pike, Counsel for Cst. Davis, that there was a conspiracy against him by the RNC and that Police Officers had tried to murder him or cause other grievous bodily harm to him. He said that all Police are out to get him and that he wouldn't be surprised if he was shot, hung, assassinated and his body disposed of. The Complainant told Inspector Singleton that he was afraid he would be shot by the Police.
11. The Complainant said he did not know how the cell phone was damaged, that he was angry and threw it away and that he should have made the Truck Operator eat it.
12. Cst. Davis was not shouting at him during the proceedings and his understanding of what was going on could have been influenced by his 50% hearing loss and the fact that heavy equipment was operating on Bay Bulls Road that day.

### **Direct Evidence of Dale Baker**

13. This gentleman worked for the Towing Company and was with David Porter in the truck on October 15<sup>th</sup>, 2001.
14. Mr. Baker testified that they were dispatched to tow a Suburban at 148 Bay Bulls Road and that they arrived there between 1:30 p.m. and 2:00 p.m.
15. Just before they had completed their preparations for towing, a man came out of the house and someone went to get the owner of the Suburban. Mr. Wall then appeared and asked them what they were doing and that he had issues with Piccott's (the vehicle vendor) and his vehicle was not going anywhere until things were resolved.

16. Mr. Baker told him that he would call Piccott's and find out what was going on. During his call he was informed that the Vendor had papers in their office and that we were to take the vehicle and call the Police. He said that Mr. Wall was upset and angry, as are most people in situations like this.
17. Mr. Porter went to call the Police, which is when Mr. Wall grabbed the cell phone, cracked it in two pieces and threw it into the woods. They then called the Police using another cell phone.
18. Things were getting out of hand until the Police arrived and separated the parties.
19. The RNC Officer asked him if it would resolve the situation with Mr. Wall paying \$100.00 for the phone, he said yes and after several more minutes of discussions received the money from Mr. Wall.

#### **Cross Examination of Dale Baker**

20. Mr. Baker confirmed that the Complainant grabbed the cell phone from Mr. Porter, cracked it in half, then threw it away.
21. This witness confirmed Mr. Wall's testimony as to the non-threatening manner of Police on the day in question; specifically that Cst. Davis was polite and courteous towards both himself and Mr. Wall.

#### **Other Evidence**

22. *Mr. David Porter's* evidence was to the effect that Mr. Wall was angry and upset the whole time, despite the fact that Cst. Davis was courteous and polite to the

Complainant throughout.

23. *Cst. Graham Rex* is a 15 year Veteran of the RNC and on the day in question also responded to Bay Bulls Road with his partner *Cst. Blair Waterman*. *Cst. Rex* arranged for *Mr. Baker* to sit in his police vehicle and started to take a statement from him; however there was reluctance on *Baker's* part to make a complaint. *Mr. Wall* came over to *Cst. Rex's* vehicle and had some discussion with *Mr. Baker* about compensating him for the loss of his cell phone. He said that *Mr. Wall* was asking *Mr. Baker* not to make a complaint against him and in *Cst. Rex's* opinion it looked like things were going to be settled, especially given the conciliatory tone in *Mr. Wall's* voice.
24. *Cst. Paul Davis* is an RNC Officer is a 19 year Veteran who was working alone on October 15<sup>th</sup>, 2001, being dispatched to the scene as a back-up unit. Due to his proximity he arrived very quickly and was the first there.
25. The Complainant told him, in a very agitated fashion, that someone was trying to steal his vehicle. *Cst. Davis* then spoke with Messers. *Porter* and *Baker* and ascertained that they were on a repossession assignment for a lien holder with respect to *Mr. Wall's* vehicle.
26. Prior to the arrival of *Csts. Rex* and *Waterman*, *Cst. Davis* was attempting to keep the adversaries apart. *Mr. Baker* told the Officer that all he wanted was compensation for his cell phone; information that he then relayed to *Mr. Wall* who then went to speak with *Mr. Baker*.
27. According to *Cst. Davis* the incident then ended quietly.

28. *Inspector Robert Johnson* was called as a witness in order to explain the RNC's policy on officer's discretion *vis-a-vis* laying charges. According to Inspector Johnson, the Constable's past practice is that if all parties are in agreement, the on-scene officer's decision is acceptable.
29. *Mr. Kenneth Templeton, QC*, was the last witness to be heard. This gentleman has practiced law for over two decades and is recognized as an authority in several areas of the law, including mediation for adult victims of crime and community disputes.
30. Mr. Templeton spoke about the Conflict Resolution Canada Pilot project that was enabled in St. John's with 73 cases being refused to that group by the RNC. Obviously a proponent of such mediation it was his opinion that these programs work and should be continued and expanded in our Province as a worthwhile alternative to the adversarial process.

### **Disposition**

31. It is Cst. Davis' conduct which is before me for consideration; not that of Mr. Wall; and I must look to the evidence as adduced in determining whether the essential averments of the alleged offence against the Officer have been proven.
32. In weighing all of the evidence it is necessary for me to assess the various witnesses' credibility in light of their respective positions and as to whether or not there were any concerns which I might have which could affect that credibility.
33. In reviewing the evidence, I am struck by the consistency of all testimony save and except that of Mr. Wall. There is no doubt whatsoever that the Complainant in this

case voluntarily paid Mr. Baker for the damages to his cell phone and I cannot point to any credible evidence to the contrary. I can only conclude that the Complainant was not forced or compelled against his will to pay either Mr. Porter or Mr. Baker for his damaged cell phone by any means whatsoever.

34. The evidence which I accept paints the picture of an experienced Police Officer who carried out his duties to protect the public and maintain the peace on the day in question in a most admirable fashion and as a result the complaint against him is herewith dismissed. I thank counsel for their thorough written submissions.

DATED at Bay Roberts, in the Province of Newfoundland and Labrador, the 17<sup>th</sup> day of September, 2004.

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**DAVID L. G. ANDREWS, QC**  
**ADJUDICATOR**

Counsel:

Peter O'Flaherty, LL.B.

Mark Pike, LL.B.