

IN THE MATTER OF a complaint
by Ian Allen pursuant to the
Royal Newfoundland Constabulary
Public Complaints Regulations

AND

IN THE MATTER OF a Public
Complaint Adjudication pursuant to the
Royal Newfoundland Constabulary
Act, 1992, R.S.N. 1990, c. R-17 (the "Act").

BETWEEN:

**ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSIONER**

AND:

CONSTABLE PATRICK LAYMAN

DECISION

Summary of Proceeding:

The hearing of the above-noted matter commenced January 12, 1998 and continued and was completed on January 26th and 28th, 1998. There were five complaints referred to me as Adjudicator. At the commencement of the hearing the five references and the particulars of the alleged offence were read into the record and identified as complaint number 1-5. A copy of each of the five references labeled complaint number 1-5 are attached to this Decision and marked Appendix "A".

At the commence of this hearing, Constable Layman through his counsel denied that he was guilty of complaints number 3 and 5.

Evidence was heard on January 12, 1998 from witness for the Commissioner, a Mr. James MacDonald.

Also at the commencement of this hearing, the Chief of the Royal Newfoundland Constabulary (the "Chief") through his counsel, Mr. George Horan, gave notice of intention to make application for standing at the hearing of this complaint. On the first day of the hearing, Mr. Horan appeared by the consent of all parties. However, at the resumption of the hearing on January 26, 1998, submissions were made by all parties in response to the application of Mr. Horan for standing dated 14 January 1998. A copy of Mr. Horan's letter to me dated 14 January 1998 is attached to this Decision as Appendix "B". After consideration of the various submissions, I advised the participants that I had decided to allow Mr. Horan's application for standing as a party to the proceeding. A copy of my oral decision as transcribed is attached to this Decision as Appendix "C".

Following the disposition of Mr. Horan's Application for standing on January 26, 1998, the hearing resumed and Constable Layman, through his counsel, entered guilty pleas with respect to Complaints numbers 3 and 5. Complaints numbers 3 and 5 essentially dealt with Constable Layman's competence in the investigation of a complaint against Mr. Ian Allan, the Complainant in this matter, and which resulted in two separate sets of charges being laid against Mr. Allan. The original disposition of Complaints numbers 3 and 5 by the Chief was to acquit Constable Layman on each of these complaints.

The original disposition of Complaint number 1 was that Constable Layman was found guilty of the allegations and the Chief imposed a one day suspension without pay. On Complaint number 2 the Chief found Constable Layman guilty and ordered a written reprimand placed on his record. On Complaint number 4 the Chief again found Constable Layman guilty and again ordered a written reprimand be placed on his record.

The hearing was adjourned on January 26, 1998 following the entering of guilty pleas by Constable Layman and resumed on January 28, 1998 at which time Counsel for the Complainant and the Commissioner submitted an Agreed Statement of Facts relating to each of the five complaints. A copy of this Agreed Statement of Facts, which is marked with my own handwritten notation of certain words which were added by agreement at the time it was entered on the record, is attached to this Decision as Appendix "D".

Analysis

Given that there was no appeal from the original findings of the Chief Constabulary on Complaints numbers 1, 2 and 4 and that Constable Layman plead guilty to Complaints 3 and 5, the balance of the hearing was to receive submissions with respect to the appropriate disposition of these complaints. Submissions were heard from Counsel for the Commissioner, the Complainant, the Chief and for Constable Layman.

The Complainant, Mr. Ian Allan, also gave evidence with respect to the impact upon him of his arrest, detention for almost 48 hours and facing two sets of criminal charges.

Mr. Allan testified that the most significant effect on his life was, following of the laying of criminal charges against him, his access to his daughter, who at the time was less than two years of age, was restricted to a supervised access for limited periods of time. Mr. Allan indicated that this restriction and requirement for supervised access was lifted in December 1995 following his acquittal in November of 1995 on the first set of charges. It should be noted here that the second set of charges which were laid against Mr. Allan in January 1996 were stayed by the Crown in April of 1996. Secondly, Mr. Allan indicated that he experienced an increase in his level of stress which had an impact on his work and also resulted in his hospitalization for a couple of weeks for treatment of stress related illness. Thirdly, Mr. Allan indicated that his immigration to Canada was delayed due to the outstanding charges preventing the completion of his application. As a result, he was required to maintain a visitor's status and had to leave Canada every six months. Finally, Mr. Allan indicated he had financial impacts as a result of the arrest and subsequent criminal charges. Specifically, he indicated a loss of an export contract with the U.S. company worth about \$25,000 US Dollars and loss of prospects of further work with this U.S. company. Mr. Allan's candor and dispassionate demeanor in relating these significant impacts upon him was impressive. Further, Mr. Allan indicated that his reason for pursuing the complaint was not to punish anyone. Rather, Mr. Allan indicated that his motivation for pursuing the complaint was in the hope that others may not suffer similar consequences.

Deprivation of an individual's freedom is a very serious act. Citizens should not be arrested without just cause upon reasonable inquiry by the police. It is clear that based on the evidence before me, that at the time of the May, 1995 incident at the Allan home to which the police responded, Constable Layman arrested Mr. Allan without providing him an opportunity to respond to the allegations that were made against him by his now former wife. The time from the arrival of the police at the Allan residence to the time of arrest of Mr. Allan was extremely short, not providing Constable Layman sufficient time to do the appropriate investigation to form the basis for a decision to arrest. As a result of the arrest and the fact that the arrest was made on a weekend, at a time prior to the availability of weekend justices, Mr. Allan spent approximately 48 hours in the lockup prior to being released on bail.

Following Mr. Allan's arrest, Constable Layman pursued the investigation of complaints by Mr. Allan's former spouse of a history of assaults and threats by Ian Allan. The investigation of this complaint appears to have been executed with a lack of diligence and timeliness on the part of Constable Layman. Mention was made in

submissions of the fact that Constable Layman's duties as a member of the street patrol prevented him from executing a diligent and timely investigation. It is not acceptable that the investigation of the allegations against Mr. Allen was hampered because of Constable Layman's regularly assigned duties. Neither is this, in my view, a mitigating factor in determining penalty. It would appear from the evidence before me that Constable Layman twice requested major crimes to investigate the complaints of Mr. Allan's former spouse. Once upon filing his initial report of May 22, 1995, and a second time following Mr. Allan's acquittal of the first set of charges on November 20, 1995. Following each such request the file was returned to Constable Layman for completion of the investigation. I agree with submissions by both counsel for the Commissioner and the Complainant that, notwithstanding that his duties as a street patrol constable may have been incongruous with his ability to diligently and efficiently execute an investigation, Constable Layman on both occasions assumed responsibility for the investigation and ultimately decided to lay the charges against Mr. Allan.

Counsel for all parties submitted that all five complaints referred to me should be dealt with together as arising out of one incident and that I should consider the appropriateness of the penalty for Constable Layman on all five complaints together. I have made my considerations as to the appropriate disposition using this global approach. I also accept the submission of Counsel for the Commissioner and the Chief that matters such as professional discipline are civil in nature and that the primary purpose of such legislation is corrective and a rehabilitative process, not punitive or compensatory.

I have considered the submissions of all counsel on the appropriate penalty, I have also reviewed the prior adjudication dated August 30, 1996 by Adjudicator David Eaton concerning the Nolan Complaint. In that case, where there was a wrongful arrest, the adjudicator imposed a 5 day suspension against one of the constables. I note that Constable Layman's conduct was not intentional and deliberate as was the conduct of the police constable in the Nolan complaint. I have taken this distinction into account when comparing the two cases.

Counsel for the Commissioner did not request that the Commissioner's cost of the investigation and hearing of these complaints be ordered.

Conclusion & Order

The *Act*, 1992 sets out at Section 33 the available options following the finding of guilt on the allegations made in the complaints. Of the range of options laid out there, I find that a combination of written reprimand and a period of suspension to be the most appropriate. No other form of rehabilitative process or training was suggested for my consideration by counsel. Therefore, considering the seriousness of the conduct of Constable Layman, particularly as alleged in Complaints 3 and 5, I have determined that a written reprimand should be placed on Constable Layman's

file with respect to each of the complaints and that Constable Layman should be suspended without pay for a total of three days in respect of all five complaints.

Therefore, it is ordered that a written reprimand be placed on Constable Layman's file with respect to each of the five complaints. In this regard, there is already a written reprimand on Constable Layman's file in respect of Complaints 2 and 4. Therefore, as a result of this order, an additional three written reprimands should be placed on Constable Layman's file with respect to Complaints 1, 3 and 5. Further, I order, with respect to all five complaints taken as a whole, that Constable Layman be suspended without pay for a total of three (3) days, taking into account the one (1) day suspension previously served by Constable Layman in respect of Complaint No. 1.

Comments

There was no evidence before me upon which I can base recommendations to refer to the Minister under Section 35 of the *Act*. However, I have chosen to make an observation apart from the disposition of the matter. I share the hope and expectation of Mr. Allen that this public complaint process may serve as a deterrent to another arrest such as his in this case. Arrests by the police should only be carried out after due inquiry and careful exercise of judgment. Further, the investigation of allegations must be conducted thoroughly and diligently prior to the laying of criminal charges. A positive outcome of this process would be for the Chief and members of the Royal Newfoundland Constabulary (the "RNC"), upon reading this decision to reflect upon their duties in the arrest of citizens. Further, this decision may serve to prompt the Chief and members of the RNC to proactively review their policies and practices with respect to the conduct of investigations involving domestic violence, or other complex investigations. Such a review should be to ensure that their duty to conduct thorough, diligent and timely investigations in the future is not compromised by the circumstances and limitations of regularly assigned duties.

DATED at St. John's, in the Province of Newfoundland this 24th day of April, 1998.

JOAN F. MYLES
Adjudicator