IN THE MATTER OF S. 28(2) of the *Royal Newfoundland Constabulary Act* 1992 ("the *Act*")

AND IN THE MATTER OF the Complaint of Catherine Crockwell dated the 26th day of May, 1998

BETWEEN:

THE ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSIONER — COMMISSIONER

AND:

CONSTABLE DEBORAH MOSS — RESPONDENT

D E C I S I O N

Introduction

This matter involves a complaint by Catherine Crockwell dated May 26, 1998 against Constable Deborah Moss, a member of the Royal Newfoundland Constabulary. Constable Moss is alleged to have conducted herself in a manner unbecoming a police officer and thereby liable to bring discredit upon the Constabulary. It is alleged that Constable Moss, without good and sufficient cause, made an arrest or detained Leo Joseph Crockwell contrary to Section 3.(1)(a) of the *Royal Newfoundland Constabulary Public Complaints Regulations* (the "*Regulations"*), and neglected or omitted to promptly and diligently perform her duties as a police officer contrary to Section 3.(1)(d) of the *Regulations*, and as a result, thereby committed an offence contrary to Section 3.(2) of the *Regulations*.

The particulars of the offence are that Constable Moss on February 27, 1998 at or near St. John's and Bay Bulls unlawfully took a person into custody, namely Leo Joseph Crockwell, and thereby detained him, all without lawful authority and in breach of the *Mental Health Act* and the *Charter of Rights and Freedoms*.

The matter was referred to me as an Adjudicator by the Commissioner, Dr. Leslie Harris, on August 31, 2000, pursuant to Section 28 of the *Act*.

At the commencement of the hearing, Constable Moss, through her solicitor, raised a preliminary objection with respect to my jurisdiction to deal with this matter. The objection itself related to an interpretation of Section 28.(1) and (2) of the *Act*, and was based upon the argument that the Commissioner, by a letter to the Complainant, dated February 21, 2000, had previously decided to dismiss the Complaint against Constable Moss. It was argued that, having decided to dismiss the Complaint the Commissioner, of course, could not later decide to refer the matter to an Adjudicator for hearing. Both parties agreed that I had jurisdiction to deal with this preliminary issue.

To understand the basis of the preliminary objection, it is necessary to consider the legislative framework which outlines the role of the Commissioner. The *Act* provides that after a complaint is dealt with by the Chief or Deputy Chief of Police, either party may appeal that decision to the Commissioner. Upon receipt of an appeal, the Commissioner is required to investigate the complaint, and pursuant to Section 26 of the *Act* may attempt to effect a settlement of the complaint between the parties. If settlement is not effected by the Commissioner, the Commissioner must then, pursuant to Section 28 of the *Act* either dismiss the complaint and confirm the decision of the Chief or the Deputy (Section 28.(1)) or he may refer the matter to an adjudicator (Section 28.(2)).

For the purposes of dealing with this preliminary objection, I was provided with a "Factual Time Line" which outlined the dates upon which various events occurred,

including, among other things, the date on which the original Complaint was received, the date of the decision of the Deputy Chief of Police, the date on which an appeal was filed with the Commissioner and the date that the Commissioner's investigation was completed. I was also advised that a letter was written by Dr. Leslie Harris to the Complainant on February 21, 2000 and on February 22, 2000 a letter was also written to Constable Moss. That letter advised Constable Moss that Dr. Harris was attempting to reach a settlement with the Complainant.

Both parties before me acknowledged that the letter of February 21st, written by Dr. Harris to the Complainant, was written in an attempt to effect settlement of the Complaint. As such, this would be a letter which Dr. Harris was authorized to write pursuant to the statutory authority granted to him by Section 26 of the *Act*. Constable Moss, however, alleged that in this letter Dr. Harris also reached a decision to dismiss the Complaint. This, of course, would be a determination which Dr. Harris was required to make under Section 28 of the *Act*, in the event that he was unable to effect settlement between the parties. Constable Moss therefore argued that having previously made a determination to dismiss the Complaint by his letter of February 21st, the decision made by the Commissioner on August 31st to refer the matter to an adjudicator was without authority.

In dealing with this preliminary issue, Constable Moss argued that the letter should be produced by the Commissioner for my review to enable me to decide this preliminary matter. Counsel for the Commissioner objected to the production of the letter on the basis that the contents of letters being made in furtherance of the settlement function of the Commissioner were privileged from production based on public policy.

Having considered this matter, in my view, it is not necessary for me to review the letter which Dr. Harris had written to the Complainant. I therefore make no ruling as to the admissibility of such a document written in the course of the Commissioner's

exercise of this statutory right. It is clear, and the parties have so agreed, that when Dr. Harris wrote the letter to the Complainant on February 21st, Dr. Harris did this for the express purpose of attempting to effect settlement of this Complaint. In doing so, one would expect that the Commissioner would point out the weaknesses of an appeal, to entice the parties to reach a settlement which, of course, always requires compromise by both participants. Regardless of the content of that letter, it is clear that the Commissioner was not himself deciding the matter as he is required to do under Section 28 of the ***Act***. I therefore clearly do not accept that the Commissioner had previously made a determination in this matter when he referred it to me on August 21st as he was required to do under Section 28. I therefore dismiss this preliminary objection and conclude that the matter has properly been referred to me.

At the commencement of the hearing, counsel for the Commissioner requested that Constable Moss provide him with a list witnesses intended to be called on her behalf and a summary of facts each witness was expected to relate at the hearing. This request was made pursuant to Section 21 of the ***Regulations***. This section provides that a police officer is not compelled to testify at a hearing before an adjudicator. It also provides that upon request, either party shall provide a list of witnesses to be called and a summary of the facts each witness is expected to relate at the hearing. Section 21 is obviously intended to provide disclosure to the other side to enable each side to prepare for and meet the other's case.

Constable Moss took the position that these ***Regulations*** did not require her to provide this information until such time as the adjudicator, at the conclusion of the Commissioner's case, first determines that there is a case to meet as he is required to do by Section 26 and 27 of the ***Regulations***. Section 26 provides that at the conclusion of the evidence of the Commissioner, the adjudicator must determine if a case has been made out. If a case is not made out, the adjudicator shall dismiss the complaint. If, however, he determines that a case is made out, he shall provide the police officer with an opportunity to call evidence.

I do not accept the argument submitted by Constable Moss that she is only required to provide disclosure at the end of the Commissioner's case and only after a case against her has been made out. The purpose of disclosure is twofold. Firstly, it enables the other side to better prepare for cross-examination, and secondly, it enables the other side to call evidence that it may not have otherwise called to refute, rebut or support the other side's witnesses. It is therefore necessary that both sides receive disclosure before the hearing commences and certainly before one closes one's case.

It is my view, therefore, that a police officer as well as the Commissioner is required to provide disclosure immediately following a request from the other side. It is also my view, however, that the disclosure provided by the police officer does not apply to a summary of the facts to be given by the officer who is charged. Section 21.(3) provides only that the Commissioner is to be provided with a list of witnesses to be called on behalf of that police officer and a summary of the facts that each witness is expected to relate at the hearing. This, of course, does not apply to the police officer but only to witnesses who testify on behalf of the police officer. The Commissioner, of course, is always clothed with the knowledge that the police officer may or may not testify and would be expected to prepare for that eventuality.

The Evidence

The evidence before me comprises information by way of documentary evidence submitted by the consent of the parties, as well as viva voce evidence presented by a number of witnesses. Those include Superintendent, Robert Shannahan, Colin Flynn, a former Director of Public Prosecutions for the Province of Newfoundland, Constable William Janes, as well as Constable Deborah Moss.

Constable Moss has been a police officer since 1989. She has spent all of her time in the Patrol Division; however, shortly before the events of February 27, 1998 she was assigned to the Criminal Investigation Division working with Constable Janes.

Superintendent Robert Shannahan was and is in charge of the CID unit of the Royal Newfoundland Constabulary. He testified that in February of 1998 he received a phone call from Maureen Greene, a lawyer and Vice-President of Newfoundland and Labrador Hydro. While Superintendent Shannahan was unable to recall the precise date of the call, other evidence establishes that it was Friday, February 27, 1998. During this phone call Ms. Greene related to Superintendent Shannahan concerns that she and other Hydro employees were having over the conduct of Leo Crockwell, a Hydro employee. Mr. Crockwell had been placed off work on disability because of behavioral problems since early November. Superintendent Shannahan related that he had received a previous call concerning Mr. Crockwell from another Hydro employee.

Ms. Greene had informed Superintendent Shannahan that she was concerned about Mr. Crockwell's behavior particularly over the previous three weeks. She indicated to him that Mr. Crockwell was acting irrationally and, in spite of being placed off work, was coming to the Hydro building more often and in particular was looking for Ms. Greene. On one occasion he met her in the Hydro parking lot. She described him as being agitated. On another occasion when she met him he was wearing a suit with his father's war medals. Superintendent Shannahan was also advised by Ms. Greene that a peace bond application had been taken against Mr. Crockwell by his former girlfriend, another Hydro employee. As well, it had been reported to her by other Hydro employees that Mr. Crockwell felt that Hydro was persecuting him. He reported that he felt that he was in a "chess game with too many pieces" and he had to get rid of some of the pieces and it had to be Ms. Greene. As well, Superintendent Shannahan was advised that Mr. Crockwell was looking for Ms. Greene personally and had made inquiries of her home phone number.

Ms. Greene advised Superintendent Shannahan that Mr. Crockwell had been assessed by Dr. Hogan, a psychiatrist, at the request of Hydro's doctor. It was reported to Superintendent Shannahan that Mr. Crockwell was potentially violent and that he should not be allowed back into the Hydro workplace.

Superintendent Shannahan described Ms. Greene as being very upset, fearful and threatened. She was concerned that things could be coming to a head and that she was in fear of her own safety as well as the safety of the other staff at Hydro.

Following receipt of this information, Superintendent Shannahan testified that he felt that he was dealing with a potentially dangerous situation and that, in his opinion, the matter had to be addressed immediately. He assigned this matter to Constables Moss and Janes. Both individuals testified that when they were first contacted by Superintendent Shannahan they were away from Police Headquarters, however, upon Superintendent Shannahan's instructions, they immediately returned to Headquarters where they met and discussed the substance of Ms. Greene's call. Constable Moss testified that Superintendent Shannahan conveyed to her his impression that the matter was one of importance that had to be investigated immediately.

From the evidence before me it is fairly clear that when the police officers met, they came to the conclusion that a bond application would not provide a useful remedy in this instance. While they did not rule out a criminal charge, based upon apparent threats, they appreciated that there was no reliable evidence upon which to base such a charge. From their initial assessment, it appeared fairly clear that the most likely remedy available to them would be to detain Mr. Crockwell under the *Mental Health Act*. Following this initial meeting, Constables Moss and Janes met Ms. Greene at the Hydro building where a statement was taken at about 4:00 p.m. In the statement Ms. Greene repeated much of the information previously provided to Superintendent Shannahan. As well, she provided some additional information consisting of, among other things, medical reports from Dr. James Simmons and Dr. Martin Hogan. As well, other

information in Mr. Crockwell's employment file was provided to the police which consisted of correspondence written by Mr. Crockwell to his employer and to Dr. Simmons. Ms. Greene again reiterated to the police officers that she had been advised that Dr. Hogan was very concerned about the potential for violence and that he felt that Ms. Greene should call the police. Dr. Hogan apparently reported to her that Mr. Crockwell was the second worse case of paranoid schizophrenia he had seen.

Following receipt of this information, Constables Moss and Janes returned to Police Headquarters, somewhere around 4:30 p.m. Constable Moss took it upon herself to call Dr. Hogan. Dr. Hogan advised her that he would have no hesitation in certifying Mr. Crockwell if his examination had been completed within the time limits prescribed under the *Mental Health Act* allowing for physician certification. He described Mr. Crockwell as extremely hostile with a paranoid personality and was an individual suffering from paranoid schizophrenia. Dr. Hogan advised Constable Moss that, in his opinion, Mr. Crockwell could be dangerous; he had been expecting her call and from his perspective he equated Mr. Crockwell on the same or worse level as a particular individual who had murdered his parents and was known to Constable Moss. Dr. Hogan advised Constable Moss that, in his opinion, Mr. Crockwell was a very sick individual and that there was a problem. After discussing this matter by telephone with Dr. Hogan, Constables Moss and Janes again met with Superintendent Shannahan, and she related her conversation with Dr. Hogan to them. Superintendent Shannahan instructed Constable Moss that the matter had to be dealt with further that day and authorized overtime for Constable Moss to continue with her investigation. Constable Janes went off shift at 5:00 p.m.

It has been suggested by counsel for the Commissioner that at this meeting a decision had been reached to detain Mr. Crockwell under the *Mental Health Act*, prior to the police officers meeting with him personally and evaluating the situation. I am not satisfied that the evidence leads to this conclusion. The evidence certainly indicates that a detention of Mr. Crockwell was a likely outcome, however, this decision was not

predetermined. Subsequent steps taken by Constable Moss to arrange a police car, which was equipped to transport an individual, together with police back up were simply matters of planning in the event that it was determined that Mr. Crockwell was to be detained.

From my view, evidence supporting this conclusion comes not only from the evidence of Constable Moss, but also from the evidence of other witnesses including Superintendent Shannahan. Constable Moss herself testified that no decision had been made to detain Mr. Crockwell prior to her meeting him. Support for this testimony is found in an Information later completed by Constable Moss on March 2nd, and, as well, in evidence from a hearing subsequently held in Provincial Court on the same date. In that Information, Constable Moss states that her decision to detain Mr. Crockwell was not only based upon the background information which she had received, but as well, was based upon her dealings with Mr. Crockwell. At the hearing in Provincial Court, Constable Moss testified that her purpose of going to Bay Bulls that evening was to see Mr. Crockwell and make an assessment as to whether she felt the concerns of Ms. Greene and Dr. Hogan were valid, and to determine whether Mr. Crockwell should be seen by a physician.

As well, if such a decision had been pre-determined, Constable Moss would simply have asked the RCMP, in whose jurisdiction Mr. Crockwell resided, to locate and detain Mr. Crockwell for them. Superintendent Shannahan stated that while he expected that it was likely that Mr. Crockwell would in fact be detained, no such decision was made at Police Headquarters. His instructions to Constable Moss were to locate and speak to Mr. Crockwell. He left it to Constable Moss to investigate the matter. He expected Constable Moss to take whatever steps she felt were necessary once she evaluated the situation and it was up to Constable Moss to make whatever decision she felt appropriate.

Because Mr. Crockwell resided in the RCMP's jurisdiction, Constable Moss, as a matter of courtesy, contacted the RCMP informing them of her investigation of a possible detention of Mr. Crockwell under the *Mental Health Act*. She asked for their assistance in locating Mr. Crockwell. Constable Beason, an RCMP member, also advised her that he had spoken to Mr. Crockwell recently and had noted a change in his behavior which caused Beason concern.

Superintendent Shannahan had authorized police backup for Constable Moss. Later that evening she traveled to Bay Bulls with Constable Tobin and with a backup unit driven by Constable Gosse. Constable Gosse had advised Constable Moss of a previous incident he had with Mr. Crockwell and he, as well, informed her that he was concerned for her safety. In light of all of this background information, there is no doubt that Constable Moss was concerned about the situation and her encounter with Mr. Crockwell. She testified that she viewed the situation as being potentially dangerous.

When those members of the Constabulary arrived at Bay Bulls, they were advised by Constable Beason that Mr. Crockwell was at home. Unbeknownst to Constable Moss, Constable Beason had previously spoken to Mr. Crockwell at a gas station and advised him that the Constabulary wished to speak to him. Mr. Crockwell went to his home and was waiting for the police to arrive. Upon arrival, Constables Beason and Gosse waited across the street, initially at least. Constable Moss, with Constable Tobin, entered Mr. Crockwell's driveway, at which time Constable Moss contacted Mr. Crockwell by cellular phone. She asked Mr. Crockwell to come out of his house to speak to her. She testified that this was done for safety reasons. In her opinion it was potentially more dangerous for her to be in his house. Mr. Crockwell initially refused to come out and invited Constable Moss in. Within a short time however, he did come out and he was accompanied by his sister, Catherine and his mother.

Constable Moss' discussions with Mr. Crockwell took place in his driveway. Constable Moss attempted to talk to Mr. Crockwell but apparently there was interference from his family members. She informed Mr. Crockwell of the reason for her visit at which time Mr. Crockwell asked her question after question about the nature of the concerns expressed by his employer and others. Constable Moss described Mr. Crockwell's behavior as uncooperative, aggressive and irrational. Constable Moss indicated that Mr. Crockwell's sister, Catherine, was difficult to deal with and described her as yelling and screaming. She did, however, advise Constable Moss that Mr. Crockwell had become more aggressive since November when she informed him of a previous incident which had occurred to her as a young child. Constable Moss indicated that Mr. Crockwell became increasingly demanding, raising his voice and demanding to see documents or papers. At one point in time, a cousin of Mr. Crockwell came by and informed Constable Moss that he hoped that she would be able to do something for Mr. Crockwell.

As a result of her encounter with Mr. Crockwell and based upon information which she possessed, Constable Moss testified that she came to the conclusion that Mr. Crockwell was suffering from a mental illness and in her words felt that he was "spinning out of control". She came to the conclusion that he needed to be evaluated by a psychiatrist before he hurt himself or others. She testified that when he started to exhibit signs of paranoia it was then that she made her decision to detain him under the *Mental Health Act*. At that point, she instructed Constable Tobin to place Mr. Crockwell in the police car. Constable Moss testified that the more Mr. Crockwell spoke, the more irrational, excited and frantic he became. She testified that she could not say that he was acting in a disorderly or dangerous manner. His family was interfering with the conduct of her duties and she was concerned that things were getting out of control.

At some point in time during the encounter, family members began interfering with the police. It appears that this occurred when the police were attempting to put Mr. Crockwell in the police car. As such it became necessary for Constables Beason and

Gosse to come onto the Crockwell property to lend assistance. Constable Moss then spent some time attempting to settle down the family and explained to Mr. Crockwell and his family that he was being brought to see a doctor and that he was not being charged with any offence. After Mr. Crockwell was placed in the police car he apparently settled down. On the way to St. John's, he continued to ask questions of the police officers taking about a number of different and unrelated matters. Constable Moss described his conversation as being "a flight of ideas with no connection or logic".

As police procedure dictated, Mr. Crockwell was brought to the lock-up where he was to be evaluated by an on-call psychiatrist. In this case, it was Dr. Niklas. Constable Moss spoke to Dr. Niklas by phone and as well left a note for him to read. This Note was entered into evidence as Consent 3. In it Constable Moss summarizes the evidence she had received that day from others, including Dr. Hogan's comments. When describing Mr. Crockwell's behavior at Bay Bulls, Constable Moss stated the he displayed "apprehensive behavior" and, given the information that she had recorded, she felt that he should be seen by a psychiatrist under the *Mental Health Act*.

Apparently Dr. Niklas attempted to assess Mr. Crockwell that evening and again on Saturday. Mr. Crockwell refused to speak with him. Mr. Crockwell wanted his personal lawyer present but his lawyer was out of the Province on vacation. While Saturday was her day off, Constable Moss did phone the lock-up to inquire of Mr. Crockwell's well being. She was informed that he continued to refuse a medical examination.

The evidence before me indicates that throughout the weekend Mr. Crockwell continued to refuse to submit to an examination. On Sunday afternoon, Dr. Cantwell, a Director of the Waterford Hospital phoned Colin Flynn at home to advise him of the situation. After some thought, Mr. Flynn felt the appropriate solution was to seek a warrant for Mr. Crockwell's continued detention under the *Mental Health Act*. He was

concerned that Mr. Crockwell was languishing in the lock-up and that there was no way to have him released without involvement by the judiciary.

In spite of his long career as a criminal prosecutor, Mr. Flynn testified that Warrants were rarely, if hardly ever used, in making detentions under the ***Mental Health Act***. He had only seen one or two occasions where Warrants were obtained. In fact, none of the police officers who testified were aware of a detention under the ***Mental Health Act*** being done by way of Warrant and none of the police officers were aware of the procedures or precedents necessary to obtain a Warrant.

On Monday morning Mr. Flynn drafted a precedent for a Warrant and instructed Constable Moss on how to prepare the Information to support the Warrant. Later that day, the Information was filed with the Court and that afternoon a hearing was held before Judge Reid in the Provincial Court in St. John's. In preparing the Information in support of the Warrant, Constable Moss described Mr. Crockwell's behavior in Bay Bulls as "agitated". Constable Moss testified at the hearing before Judge Reid. In describing Mr. Crockwell's behavior, she stated:

> "He was agitated and obviously, you know, he was not very cooperative. He had, you know, not that he was combative or anything, but he was questioning me on my authority to do what I was doing and I was having some difficulties with the family were there. It's understandable in a situation like this; it's not the ideal situation."

Under cross-examination, Constable Moss, when asked if she observed Mr. Crockwell acting in a disorderly or dangerous manner, replied:

> "He was not acting in a dangerous manner. He was questioning my authority and wondered what act I was acting on, and very inquisitive, but -- and uncooperative but not combative, like he wasn't coming along willingly and he questioned me, my authority on it."

At that hearing, Constable Moss went on to explain that it was not unusual for some people to question her authority and that she was trying her best to explain to Mr. Crockwell and to his family why the police were there. She testified then, as she did before me, that based upon all of these factors, she formed the opinion that Mr. Crockwell was suffering from a mental illness which had gone unchecked and that he needed a psychiatric evaluation.

Following the hearing before Judge Reid, a Warrant, pursuant to Section 11 of the *Mental Health Act*, was issued on March 2nd. It ordered Mr. Crockwell to be taken into custody to be examined by two physicians in order to determine if he fitted the criteria set out in Section 5(1) of the *Mental Health Act*. It was ordered that Mr. Crockwell be kept in custody at the Waterford Hospital in St. John's until the examination was complete.

The evidence indicates that Mr. Crockwell, after being admitted to the Waterford, refused to submit to a psychiatric examination. Throughout this period of time, Constable Moss continued to inquire of Mr. Crockwell's wellbeing. On April 2, 1998, a further hearing was held before Judge Reid. Mr. Crockwell refused to attend. Constable Moss testified at this hearing and informed the Court that she had been contacted by the RCMP VIP Security Coordinator who had expressed concerns about Mr. Crockwell in relation to MP Charlie Power. At this hearing Dr. Ladha testified that Mr. Crockwell's behavior was highly suggestive of mental illness but that Mr. Crockwell refused to submit to an evaluation. Following this hearing, Judge Reid noted that the original Warrant continued and it was therefore not necessary to issue a new one.

Mr. Crockwell continued to refuse an examination and a further hearing was held on April 16, 1998. Mr. Crockwell was present at this hearing. Again, Judge Reid commented that the Court had already decided the matter and Mr. Crockwell's release was a matter for determination by the Waterford Hospital once Mr. Crockwell had submitted to an examination.

After that hearing, Constable Moss continued to inquire of Mr. Crockwell's well being, often times speaking with his family members encouraging them to seek assistance for Mr. Crockwell.

I understand that Mr. Crockwell remained in the Waterford Hospital until mid July 1998, some 140 days. He continued to refuse an assessment by psychiatrists until it was agreed, on application to the Supreme Court, to an assessment by two independent psychiatrists outside the Hospital. One of those psychiatrists apparently found that Mr. Crockwell suffered from a mental disorder and, while concluding that he could possibly be a risk to himself and others, was not prepared to certify him. As such, Mr. Crockwell was released.

Findings

The *Mental Health Act*, R.S.N. 1990, c. M-9, provides a number of avenues for the detention of and the admission for treatment of persons suffering from a mental disorder to the degree that the person requires hospitalization in the interests of his or her own safety, or the safety of others or property, without that person's consent. There are three ways. Section 5 provides for such admission where two physicians sign a certificate to that effect. A certificate signed by one physician is sufficient authority to detain such a person until he is examined by another physician. Section 11 provides for such admission by Warrant issued by a provincial court judge. Finally, Section 12 provides for detention by police officers.

Section 12 provides as follows:

> 12 Without prejudice to a right conferred on him or her by law, where a peace officer observes a person acting in a disorderly or dangerous manner, the peace officer may, where he or she has reasonable cause for believing that the person is suffering from a mental disorder to the degree specified in subsection 5(1) and it is impractical in the circumstances to

> obtain a warrant from a Provincial Court judge under Section 11, apprehend the person and take him or her to a treatment facility or other safe and comfortable place and detain him or her until he or she is medically examined by 2 physicians.

It is trite to say that the right of liberty and freedom is one of the most basic of rights of our Society as enshrined in our *Canadian Charter of Rights and Freedoms*. Every citizen may only be deprived of that right in a lawful manner, in accordance with laws which modify or take away such right. Our Society demands no less, and individuals, who may be subject to unlawful detention would expect no less.

Section 12 of the *Mental Health Act* by its terms clearly only entitles a police officer to detain an individual if three conditions are present. Firstly, the police officer must him or herself observe the person acting "in a disorderly or dangerous manner". Secondly, that police officer must have reasonable cause to believe that such a person is suffering from a mental disorder to such an extent that he or she requires hospitalization for his or her own safety, the safety of others or the safety of property. Thirdly, it must be impractical for the police officer to obtain a warrant from a Provincial Court judge.

While the lawful detention by police officers under the *Mental Health Act* as set out in Section 12 appears fairly clear, the Policy and Procedures Manual issued by the Royal Newfoundland Constabulary, upon which officers such as Constable Moss and others rely in the execution of their duties, instructs police officers differently. During the hearing I was provided with various excerpts of the Policy and Procedures Manual dealing with detentions under the *Mental Health Act*. In particular, I was provided with an undated excerpt which apparently had been in effect prior to February 9, 1995. As well, I was provided with an excerpt which had been revised in February of 1995. Finally, I was provided with an excerpt which was identified as coming from the current CD ROM version of the Manual. At one point in time police officers were provided with a field copy of the Manual but some years ago, approximately four to five, these Manuals were taken back from police members to be updated. For some four or five

years now officers have been carrying out their duties without field Manuals. As well, while the evidence indicates that the current CD ROM version of the Manual is available on some computers in Police Headquarters, it appears that not all police officers are aware of this.

The original version of the Manual, in effect prior to 1995, correctly informed a police officer of his or her lawful right to detain a person as outlined in Section 12. The 1995 updated version, as well as the version currently appearing on CD ROM advises police officers of an authority to detain which is beyond legal authority which the law grants to them. Since 1995 the Manual provides as follows:

> *Mental Health Act*
>
> 1. Police Response in Case of Suspected Mental Disorder:
>
> (a) Section 5(1) of the *Mental Health Act* ("*MHA*") authorizes the detention of a person without his or her consent when, in the opinion of a physician, that person is suffering from a mental disorder which jeopardizes their own safety, the safety of others, or the safety to property. Any member acting on the instructions of a physician, should have the physician provide a certificate, in accordance with Section 5(3) of the *MHA*, prior to detaining that individual.
>
> (b) Section 12 of the *MHA* enables a peace officer to detain a person without their consent when based on the officer's observations a person is suffering from a mental disorder to the degree outlined in Section 5(1) of the *MHA*. Upon detention the individual must be examined by a physician.
>
> (c) Section 12 of the *MHA* also enables a peace officer to detain a person without their consent when the officer has reasonable cause to believe the person is suffering from a mental disorder to the degree outlined in Section 5(1) of the *MHA*. Reasonable cause for the detention may include, but is not limited to direct information or information from a third party. A statement should always be obtained from the third party.

> (d) When practicable, a warrant should be obtained prior to the detention of an individual, in accordance with Section 11 of the *MHA*.

Clearly, this Manual is deficient and wrongly informs police officers of a right to detain which the law does not afford them. It fails to advise police officers that as a pre-condition to detention, the officer must personally observe the individual acting in a "disorderly or dangerous manner". As well, the Manual, in my view, improperly instructs the officers when a warrant should be obtained from a Provincial Court judge. The Manual instructs the officers that "when practicable" a warrant should be obtained from a Provincial Court judge. This wrongly implies to officers that they have a choice. The *Act*, on the other hand, authorizes a detention by an officer only as a last resort and when it is not practical, "impractical" to obtain such a warrant.

All police officers who testified at the hearing before me indicated that they were not aware of the strict legal requirements for detention under the *Mental Health Act*. All relied upon the Policy and Procedures Manual and all were under the impression that they had a legal authority to detain solely upon the basis that a person was suffering from a mental disorder and if that information was provided by a third party, they could detain if they had a statement from the third party. The evidence is clear that when Constable Moss attended at Mr. Crockwell's house that evening, she also relied upon the incorrect information provided in the Polices and Procedures Manual. She did not have access to the *Act* itself. Relying upon the Manual, it was her belief that her power to detain Mr. Crockwell was substantially broader than permitted under the *Act*.

The particulars of the Complaint against Constable Moss is that she unlawfully detained Mr. Crockwell in breach of the provisions of the *Mental Health Act*. As a starting point, I must first consider whether grounds for Mr. Crockwell's lawful detention existed. If they did, the Complaint will obviously fail.

At this hearing, Constable Moss testified on her own behalf. I am satisfied that Constable Moss gave her evidence in an honest and straightforward manner. She did not attempt to exaggerate or overstate her observations of Mr. Crockwell that evening. She struck me as a dedicated police officer who was concerned with Mr. Crockwell's best interests. She, for example, continued to inquire about his well being long after his detention was continued by the Court, which she did not have to do. I have concluded that Constable Moss acted only in good faith and in what she felt was Mr. Crockwell's best interests.

For Mr. Crockwell's detention to be lawful, a number of pre-conditions must exist. First of all, Constable Moss must have had reasonable cause for believing that Mr. Crockwell was suffering from a mental disorder to such an extent that he required hospitalization for his own safety, the safety of others or the safety of property. Clearly, based upon the information which Constable Moss possessed that day, she had reasonable grounds for such a belief. As well, however, there is a requirement under the *Act* that Constable Moss must observe Mr. Crockwell acting in a disorderly or dangerous manner. The evidence does not support a reasonable conclusion that Mr. Crockwell acted disorderly or dangerously and indeed to her credit, Constable Moss did not attempt to describe his actions as being disorderly or dangerous. At most, Constable Moss described his behavior as agitated and she herself acknowledged that he did not act disorderly or dangerously. Mr. Crockwell was described only as being somewhat resistant to his detention. It appears that his family members were more disorderly than he, but this behavior came about principally because he was advised by Constable Moss that he was being detained. When this occurred, his behavior was not unlike the behavior of many others who find themselves being detained by the police as Constable Moss has acknowledged.

In short, therefore, the evidence establishes that Mr. Crockwell was not acting in a disorderly or dangerous manner when observed by Constable Moss and accordingly, conditions for his detention by Constable Moss did not exist.

While perhaps it is not necessary to do so, the evidence, in any event, does not establish that it was impractical in the circumstances to have obtained a warrant from a Provincial Court judge. It was approximately four to five hours between the time a decision was made to locate Mr. Crockwell and his detention. From the information provided to the police officers, it appeared fairly clear that his detention was likely. This time frame appears quite adequate for a warrant to have been obtained. The fact that as a practical matter, warrants are not sought, does not make this practice correct. I suspect that in any event the reason why they are not routinely sought is because officers are not aware that warrants must be obtained as a first choice unless it is impractical to do so.

Throughout this matter, as previously indicated, Constable Moss acted in complete good faith and in accordance with what she had been led to believe was her lawful authority to detain. I have previously determined that the conditions for detention by a police officer did not exist. A question for consideration is whether an arrest or detention that would otherwise be unlawful is somehow made lawful because a police officer acts in good faith. This matter has been dealt with in the case of ***Beatty v. Kozak***, 13 D.L.R. (2d) 1, a 1958 decision of the Supreme Court of Canada. That case involved an arrest without warrant of a plaintiff by two police officers for apparently being mentally ill and disorderly under the ***Medical Hygiene Act of Saskatchewan*** (the "***Sask. Act***". The police officers effected the arrest without warrant on the ground that the individual was apparently mentally ill and in the belief that such arrest was authorized by Section 15 of the ***Sask. Act***. At the time of the arrest, the plaintiff was in her place of business acting normally. Section 15 of that ***Sask. Act*** provided for an arrest without a warrant of a person who is apparently mentally ill and conducting himself in a manner which was disorderly. The officers argued that the arrest of the respondent was authorized under Section 15 of the ***Sask. Act*** and that if it was not so authorized, the officers were acting in good faith and with reasonable care and therefore were relieved from liability pursuant to Section 61 of the ***Sask. Act***. Section 61 of the

Sask. Act protected a person acting under authority of Section 15 from civil liability if the person so acting does so “in good faith and with reasonable care”.

In a civil suit launched against the arresting officers for false imprisonment, the Court described the meaning and apparent purpose of Section 15 to envisage as the condition of its application, something in the nature of an emergency as the *Sask. Act* itself contained ample provision for the apprehension and admission to an institution by due process of law, persons who are or are suspected of being mentally ill. The Court in that case concluded that two things were required before a person may be apprehended without warrant, namely, such person must be apparently mentally ill or mentally defective and that he must be conducting himself in a manner in which in a normal person would be disorderly. The Court concluded that the arrest was unlawful as the plaintiff was not acting in a disorderly manner at the time of her arrest. As stated by Cartwright J. on page 13:

> To hold that a statutory provision which authorizes an interference with the liberty of the subject, provided two conditions exist, could extend to a case in which neither exists would be contrary to the well established rule of construction referred to by Gordon J.A.

In that case, the Court concluded that the police officers had not acted with reasonable care and did not have a bona fide belief in the facts which existed which would afford justification under the *Sask. Act*. The Court upheld the decision of the Court of Appeal that the arrest was illegal.

Similarly, the case of *Sinclair v. Broughton and the Government of India*, 47 LT 120, an 1882 decision of the Privy Council, is authority for the proposition that the exercise of good faith in the supposed discharge of a public duty and in a bona fide belief does not prevent the imposition of liability. In that case, a military officer believing the appellant to be a dangerous lunatic, directed two medical officers to examine him and guard over him. They reported the appellant to be perfectly sane. The individual sued for false imprisonment. The Court allowed the action. It held that the conduct of

the officer was not authorized by statute. As such, the fact that the officer acted in perfect good faith in the supposed discharge of a public duty and in a bona fide belief that the appellant was dangerous did not prevent him from being liable for damages at the suit of the appellant.

Based upon the foregoing, I conclude that Constable Moss' detention of Mr. Crockwell was unlawful. While I have no doubt that Constable Moss acted in the utmost good faith and in an honest belief that she was authorized to make such a detention under the *Mental Health Act*, she was not. The conditions allowing for a detention of Mr. Crockwell by a police officer did not exist and Constable Moss therefore had no authority for causing his detention.

Having found, therefore, that Mr. Crockwell was unlawfully detained by Constable Moss, does this mean that Constable Moss is strictly liable in the disciplinary context of this public complaint or does the concept of good faith apply in considering whether an officer has acted in a manner unbecoming a police officer as charged? In this case, the question is all the more compelling because the Royal Newfoundland Constabulary itself, in my view, must bear responsibility for this unlawful detention. It is clear that as a police officer, Constable Moss would be expected to act in accordance with the training which she has received and it is equally clear that the information provided by the Constabulary to its officers was incorrect.

In considering this matter, I note that Section 58 of the *Act*, in the civil context, provides that police officers are not liable for loss or damage suffered by another person because of anything done or admitted to be done in good faith pursuant to or in the exercise or supposed exercise of powers conferred by this *Act*. Section 58(2) provides as follows:

> 58(2) A person is not liable for loss or damage suffered by another person because of anything done or omitted to be done in good faith pursuant to

> or in the exercise or supposed exercise of the powers conferred by this Act.

Section 8 of the ***Act*** sets out some of the duties of a police officer, which includes apprehending criminals and other offenders and persons who may lawfully be taken into custody. The public complaints process, of course, is part of the ***Act*** and as such, it is reasonable to conclude that the concept of good faith must be imported into the ***Public Complaints Regulations*** which are passed under the ***Act***.

In this case, the specific regulations which are of concern are found in Section 3 as follows:

> 3.(1) A police officer shall not conduct himself or herself in a manner unbecoming to a police officer or liable to bring discredit upon the Royal Newfoundland Constabulary, which shall include, but not be limited to the following:
>
> (a) without good or sufficient cause make an arrest or detain a person;
>
> …
>
> (d) neglect or omit to properly and diligently perform his or her duties as a police officer.

As well, it is of interest to note that Section 3.(1)(j) provides that a police officer is subject to discipline for carrying out his or her duties in a manner contrary to the Polices and Procedures Manual.

Having considered this matter, I am not satisfied that a police officer is to be strictly liable for an offence under Section 3 for an arrest or detention that is subsequently established to be an unlawful arrest or unlawful detention. If the ***Regulations*** intended this result, different wording would have been used and that wording would simply have provided the offence to be established on the basis of unlawful arrest or detention and nothing more.

Conduct necessary to establish an offence under Section 3(1)(a), however, is qualified by the words “without good or sufficient cause”. An officer not guilty of this offence simply on the basis that his arrest or detention is established to be unlawful. Additionally it must be established that the officer acted without good or sufficient cause.

Case law establishes that the words “good or sufficient cause” is descriptive of behavior which is done in good faith, behavior which is not arbitrary, irrational, unreasonable or irrelevant to the duties which rests upon police officers. The phrase, in my view, is broad enough to include an officer acting in good faith but acting under mistake of fact as well as mistake of law. Mistake of law is not a defence to an offence but I have already concluded that Mr. Crockwell’s arrest was unlawful in the first instance. In considering good faith conduct, it makes no difference if the reasons for an officer’s mistaken belief, is prompted by a mistake of fact or by a mistake of law. I therefore do not conclude an officer is guilty of acting “without good or sufficient cause” simply because an arrest or detention is determined to be unlawful.

As well, I note for example, and in the context of this case alone, a refusal by Constable Moss to carry out her duties in an manner prescribed by the Policies and Procedures Manual (which of course results in an unlawful arrest) could have made Constable Moss subject to a disciplinary charge under Section 3.(1)(j) of the Regulations.

In short, therefore, while I conclude that Constable Moss’ detention of Mr. Crockwell was unlawful under the *Mental Health Act*, I am not prepared to accept that Constable Moss acted in breach of Regulation 3.(1)(a) and 3.(1)(d) as charged. Constable Moss, in all times, acted in utmost good faith, in accordance with an honest belief held by her and in accordance with procedures established by the Constabulary. I therefore dismiss the Complaint against her. In doing so, I realize that this decision may not provide much relief to wrongfully detained individuals such as Mr. Crockwell, but

from a disciplinary process at least, these individuals should appreciate that Constable Moss acted with the utmost good faith.

It is my decision, therefore, that the Complaint against Constable Moss be dismissed, and to that extent that the decision of the Deputy Chief of Police dismissing this Complaint be confirmed. I do not feel that it is an appropriate case for awarding costs and I make no such order.

Section 35 of the *Act* empowers an Adjudicator to make recommendations on matters of public interest. In this case, I feel it is appropriate to do so. The recommendations which I make are as follows:

1. That the Policies and Procedures Manual be immediately corrected to properly outline the circumstances for police detention of mentally ill individuals as they exist at law under the *Mental Health Act*.

2. That all police officers be immediately notified of the requirements of the lawful detention procedures of mentally ill individuals by police officers as set out in the *Mental Health Act*.

3. I encourage the Royal Newfoundland Constabulary to immediately update their Policies and Procedures Manual and to make field versions available to their members, or, as a minimum, that their members be advised of CD ROM access to these Manuals.

DATED at the City of St. John's, in the Province of Newfoundland, this day of , 2000.

REGINALD H. BROWN, Q.C.
Adjudicator