

***Order of Adjudicator pursuant to section 33(4)
of the Royal Newfoundland Constabulary Act, 1992***

COMPLAINT

The complaint before me alleges that Leonard. P. Power, as Chief of Police of the Royal Newfoundland Constabulary, by virtue of his position and responsibilities, did improperly discriminate against and harass Calvin Dwyer and Cheryl Warren (now Dwyer) and that he did otherwise fail to monitor and insure that Royal Newfoundland Constabulary officers complied with required standards of service in relation to Calvin and Cheryl Dwyer, respecting incidents occurring on January 13, 1994, October 16, 1994 and November 22, 1994.

This complaint is contained in a Reference To An Adjudicator (See Appendix 1) for hearing pursuant to section 28 (2) of the Royal Newfoundland Constabulary Act, 1992 S.N. 1992 c.R-17 having been referred by the Commissioner pursuant to section 19(1)(c) of the same Act.

The hearing was held on April 28, 29 & 30, May 1, 19 & 21 and June 2, 3 & 19, 1998.

PRELIMINARY MOTION

A preliminary motion to dismiss the complaint was made by Counsel for the Respondent Chief Power. This motion for dismissal was based on the position that the complaints made by Mr. Dwyer and Ms. Warren to the Police Complaints Commission respecting the January 13, 1994 incidents were not made within the time limit prescribed for same as provided in section 22 (4) of the Royal Newfoundland Constabulary Act, 1992, and that the proper procedures for their complaints respecting the incidents of October 16, 1994 and November 22, 1994 were not complied with. More specifically on the latter incidents, Mr. Dwyer & Ms. Warren complained within the appropriate period of time, but upon being advised by Royal Newfoundland Constabulary officers that their complaints were unmeritorious, failed to appeal those decisions to the Royal Newfoundland Constabulary Public Complaints Commission Commissioner within the 15 day period dictated by section 25 (4) of the Act. The motion for dismissal

was characterized as an abuse of process argument.

The position of Commission Counsel on the preliminary motion was that particulars alleged in the Reference are particulars only, and do not define the beginning of the three month time period referred to in section 22 of the Act, and in any event, the complaint is against the Chief of Police, as embodying the Royal Newfoundland Constabulary administration, for continuous acts of alleged discrimination and harassment, which ultimately caused Mr. Dwyer & Ms. Warren to realize they were being harassed and discriminated against. Commission counsel advocated the necessity to hear evidence before a decision is made, in order to give meaning to "considering all circumstances of the matter" referred to in section 22 (5) of the said Act.

I was of the view that evidence relating to the circumstances was necessary in order to come to a fair determination on the motion. Consequently, I ruled that the argument would be dealt with at the conclusion of the evidence, and proceeded to hear witnesses.

EVIDENCE ON THE PARTICULARS

I am now going to deal with the evidence as it relates to the particulars of the complaint, numbered one to four in the body of the Reference to An Adjudicator.

Particular 1

The first particular alleges that the Royal Newfoundland Constabulary did not adequately respond to complaints by Cheryl Warren and Calvin Dwyer that on October 16, 1994 Constable D. Maloney had made a telephone call of intimidating and harassing nature to their residence.

The evidence indicates that estranged parents Cheryl Warren and Constable Donald Maloney had a child, M, who in October of 1994 was the subject of a joint custody order. The relationship between the parents was not an amicable one. A telephone exchange occurred on the date in question between Constable Maloney and Calvin Dwyer, then common-law husband of Cheryl Warren, in which it is alleged that Constable Maloney threatened to have Mr. Dwyer "thrown in jail again" presumably

through the use of Constable Maloney's influence as a police officer. Mr. Dwyer was outraged by this threat especially in light of his January 1994 experience, and later on the same day he completed a written statement outlining the facts surrounding the incident and took it to the Royal Newfoundland Constabulary where he intended to make a formal complaint. The evidence indicates that Mr. Dwyer passed over this statement to Sergeant Rick Thorne of the Royal Newfoundland Constabulary. The matter was subsequently turned over to Lieutenant P. Ledwell for internal investigation. Lieutenant Ledwell did not interview either of the complainants or the subject of the complaint Constable Maloney, before forming the opinion that there was nothing criminal identified in the complaint of Mr. Dwyer, nor was there "anything identified to warrant disciplinary action". His conclusion was concurred in by the respondent, then acting Chief of Police, who noted in P.L.#2 that "this is a difficult case involving a domestic dispute and child custody". Lieutenant Ledwell testified that he was in touch with Ms. Dwyer by phone and made her aware of the decision and that she was not happy with same. He had treated this complaint as an internal complaint, which required no written periodic reports to the complainant/s.

The evidence indicates that there was no real investigation carried out respecting the complaint. Mr. Dwyer and Ms. Warren were not interviewed, nor was Constable Maloney interviewed with respect to the actual allegation in Dwyer's complaint.

The substance of the complaint made by Mr. Dwyer on October 16, 1994 was that Constable Maloney was threatening Mr. Dwyer to have him thrown in jail again. Presumably this would be facilitated by Constable Maloney's connection to the Royal Newfoundland Constabulary, as there were no legitimate grounds for arresting Mr. Dwyer, and none referenced by Constable Maloney during the conversation. If Constable Maloney did indeed make this threat, which has not been refuted by the evidence, then it is a serious misuse of his authority as a police officer, therefore raising disciplinary issues. At the very least, it would warrant an inquiry of Constable Maloney as to his version of the conversation. Criminal conduct, on the facts as provided by Mr. Dwyer to Sergeant Thorne, is more difficult to establish, although may have been able to be established if the matter had been comprehensively investigated. As well, there is no indication that this complaint was ever copied to the Police Complaints Commission as per the stated policy of the Royal Newfoundland Constabulary.

The particular alleges that The Royal Newfoundland Constabulary did not respond adequately to this

complaint of Mr. Dwyer. Although the conclusion reached by Lieutenant Ledwell and concurred in by then acting Chief Power may have been reached in good faith, it was based on an incomplete investigation. Accordingly, I find that the response of the Royal Newfoundland Constabulary to the complaint was not adequate.

Particular 2

The second particular alleges that the Royal Newfoundland Constabulary did not adequately investigate Cheryl Warren's complaint that Constable D. Maloney intimidated and harassed her on November 22, 1994 in an incident in the Villa Nova School parking lot.

The evidence indicates that Cheryl Warren made a complaint to Sergeant B. Wilkins who attended at her home at approximately 9:00 p.m. on November 22, 1994 in response to a telephone call she made to Royal Newfoundland Constabulary headquarters earlier that evening. Ms. Warren provided a written statement to Sergeant Wilkins detailing that Constable Maloney had parked behind her vehicle on the evening of November 22, 1994 blocking her exit from the lot. She reported that Constable Maloney wished to discuss child access issues with her which she declined to do at that time and in those circumstances. She indicated that Constable Maloney had raised his voice to her during the conversation, and that she was fearful of him as the parking lot was dark. After a minute or two, he returned to his vehicle and drove out of the lot, thereby allowing her to back up and exit the lot herself. Sergeant Wilkins provided a copy of Police Complaints Commission Form 2 to Ms. Warren, tendered as L.P.#11 in this hearing which outlines police complaints procedures and rights of complainants.

Ms. Warren subsequently contacted the Royal Newfoundland Constabulary and inquired as to the status of her complaint. She was informed by Lieutenant Ledwell that he had 30 days to report to her. According to Ms. Warren, the 30 days had passed by that time, although she could not recall the exact date of her follow-up phone call. On December 20, 1994, Constable Maloney provided a written statement to Lieutenant Ledwell giving his version of the November 22, 1994 incident. Constable Maloney admits he parked behind Ms. Warren, but indicates this was only for the duration of his conversation with his former wife which was approximately 20 seconds. Constable Maloney's version of the facts minimizes the incident.

On January 1, 1995 Lieutenant Ledwell was transferred from the Internal Review Section and Lieutenant W.J. Brown assumed responsibility for investigating the complaint. Lieutenant Brown reported to Chief Power in writing on January 4, 1995 that he felt Constable Maloney had no intent to detain Ms. Warren in the parking lot. Superintendent Budden subsequently informed Ms. Warren that he saw no evidence to suggest that Constable Maloney intended to detain her against her will, and therefore there was, in his view, no illegal detention. The Superintendent also advised he did not feel disciplinary action was warranted as Ms. Warren's allegations could not be substantiated. Superintendent Budden advised Ms. Warren of her right to appeal the decision. Ms. Warren did not appeal.

Ms. Warren is of the view that the Royal Newfoundland Constabulary should have conducted an in-depth investigation of the incident, including on-site diagramming. Although one can understand the complainant's sensitivity to the issue, the investigation, which included taking a written statement from Constable Maloney, would not have been meaningfully enhanced by on-site diagrams or additional meetings with Ms. Warren. The only difference on the facts was one of time, ie. Constable Maloney said in his statement he was parked behind Ms. Warren for 20 seconds; Ms. Warren says a couple of minutes. I accept Ms. Warren's estimate of time, if for no other reason than it takes in excess of 20 seconds to get in and out of one's vehicle and walk a few feet even without having a conversation. However, even at two minutes, the incident has to be viewed in the context of the strained and acrimonious relations between Constable Maloney and Ms. Warren. Intent to detain is difficult to prove. In the absence of statements of admission or other culpability, intent must be inferred from the circumstances. The likelihood of triers of facts inferring Constable Maloney's intent in an incident that by the complainant's own evidence lasted less than two minutes is slim. There was no evidence that the incident related in any way to Constable Maloney's work as a police officer. In these circumstances, criminal charges or disciplinary action would not be appropriate. Accordingly, I find that the investigation of the incident was adequate in the circumstances and the decision reached by the Internal Review Section was a reasonable one.

In so finding, I do not wish to cast aspersions on Ms. Warren. It is understandable that she reacted as she did given the backdrop of difficulties between her and Constable Maloney as attested to during the

proceedings.

Particulars 3 & 4

The third and fourth particulars allege that on January 13, 1994 members of the Royal Newfoundland Constabulary acted in an overzealous fashion and used an excessive display of force and intimidation in the arrest of Calvin Dwyer and in so doing, were directly or indirectly influenced by Constable D. Maloney; and the arrest and incarceration of Calvin Dwyer on the same date were both unnecessary since an appearance notice or summons would have been sufficient in the circumstances.

Evidence concerning the arrest of Calvin Dwyer on January 13, 1994 was provided by eight witnesses, namely Calvin Dwyer, Cheryl Warren, Erica Dwyer, Sergeant E. Jones, Constable Jason Sheppard, Constable William Gosse, Sergeant Paul Hierlihy and Rhonda Maloney. Notably, Constable Donald Maloney did not testify.

The facts surrounding the January 13, 1994 incident are summarized as follows:

On the morning of January 13, 1994, Cheryl Warren was contacted by her estranged husband Constable Donald Maloney and informed that he had taken their daughter M. from the daycare centre. This was during a time when Ms. Warren had custody of M. Ms. Warren was upset, and sought legal advice, which advice was for her to go to the police for assistance. She and her common-law husband Calvin Dwyer then presented to Royal Newfoundland Constabulary Headquarters to complain of the incident. At Fort Townsend they met with Lieutenant Ledwell and then Constable Paul Hierlihy. After discussion, they were advised by the two officers the matter was a civil one, and the Royal Newfoundland Constabulary would not become involved.

Mr. Dwyer and Ms. Warren left Royal Newfoundland Constabulary Headquarters and went to 38 McDonald Drive where they believed M. to be. This was mid to late afternoon on January 13, 1994. Mr. Dwyer went to the front door which was answered by Rhonda Maloney, Constable Donald Maloney's sister and the aunt of M. At this point the evidence as to what exactly happened differs as between Ms. Warren, who was in the driveway, and Mr. Dwyer, and Rhonda Maloney. Mr. Dwyer's

evidence is that he never entered 38 McDonald Drive. When Rhonda Maloney answered the door, he was standing outside. He inquired about M and Rhonda Maloney called out to M who was inside the house. At the same time Fluffy the cat escaped from the house and Mr. Dwyer along with Rhonda Maloney went down the steps to fetch her. They then both walked back up the steps, where by this time M was. M jumped into his arms and he walked down the steps to where M's mother was, M jumped into her mother's arms, and they got into their vehicle and drove away. This version is verified by Ms. Warren, who was approaching from the driveway.

Ms. Maloney testified that she answered the door and advised Mr. Dwyer, in response to his question that M's mother wanted to know how M was, that M was fine. She stated she closed the door and said "leave" to Mr. Dwyer, but that he opened it again, stepped inside and grabbed her hand which had hold of M. Ms. Maloney testified Mr. Dwyer took M to his vehicle and she then called for her father who was inside the home. Ms. Warren and Mr. Dwyer drove away with M. Ms. Maloney's recollection of the incident was poor, and in answering questions she relied heavily on her statement given to Constable Gosse at the time.

As Mr. Dwyer and Ms. Warren drove away with M, Mr. Maloney Sr. was gesturing in anger from the doorstep, with Mrs. E. Maloney and Rhonda Maloney standing nearby. Constable D. Maloney was not present.

Rhonda Maloney testified that she then called 911 looking for her brother, Constable D. Maloney, who later returned to 38 McDonald Drive. Ms. Maloney stated she could not recall who she spoke to at Royal Newfoundland Constabulary headquarters, but that she called for her brother because her niece had been taken. She did not recollect making any phone call to the police to make a complaint. There was a suggestion that Constable D. Maloney made the complaint although that was not proved. In any event, a complaint was made to the Royal Newfoundland Constabulary to which Constable William Gosse and Sergeant E. Jones responded by attending at 38 McDonald Drive to investigate the matter. Two CID officers, then Constable Paul Hierlihy and Constable Jason Sheppard also arrived. All policemen agreed the matter was minor, so Constable Gosse, the junior patrol officer, conducted the investigation. He took statements from Rhonda, James and Ellen Maloney, and in consultation with Sergeant E. Jones, formed the opinion that charges against Calvin Dwyer of unlawful entry into a

dwelling house with intent to commit an indictable offence therein and common assault were warranted.

Constable Gosse testified the incident was "minor" but that he determined it necessary to arrest and detain Calvin Dwyer in order to prevent the continuation of the offence. The two CID constables left the Maloney residence prior to all statements being taken. They determined it was not necessary for them to stay at the scene but indicated to Constable Gosse and Sergeant E. Jones they were available for back up with Mr. Dwyer's arrest at his home at 14 Petawa Park if necessary. Constable Gosse also testified that he did not recall Sergeant Hierlihy and Constable Sheppard being present at 38 McDonald Drive nor did he request their back up assistance at 38 McDonald Drive or 14 Petawa Park. Sergeant Jones recalled the presence of CID officers, but stated that he had not requested their assistance at either 38 McDonald Drive or 14 Petawa Park and they came along on their own to the Dwyer residence. Sergeant Hierlihy testified that Constable Gosse did call them for assistance. In any event, four police officers subsequently proceeded to the Dwyer residence at 14 Petawa Park, Chamberlains to arrest Mr. Dwyer. There was a suggestion that Constable Maloney may have been in the police car with Constables Hierlihy and Sheppard although both former CID officers deny that.

The four police officers arrived at 14 Petawa Park in three different vehicles. The evidence of Erica Dwyer, Calvin Dwyer's 17-year-old daughter who answered the door, is that at least one of the patrol cars had its flashing lights activated. The police officers testified that the lights were not activated. Ms. Dwyer was straightforward in her evidence and her memory of the event was clear and I accept that the flashing lights were activated on at least one of the three police cars parked in front of the Dwyer residence. The evidence is conflicting as to how Constables Hierlihy and Sheppard entered the Dwyer home. They say they followed Constable Gosse and Sergeant Jones in through the front door. Mr. Dwyer and Ms. Warren and Erica Dwyer testified they entered through the patio door off of the kitchen. In this respect I find the evidence of Mr. Dwyer, Ms. Dwyer and Ms. Warren more reliable, as their recollections of the event are much clearer than those of Hierlihy and Sheppard. It is remarkable that Constables Hierlihy and Sheppard took no notes of their involvement in this entire matter, which lasted during a period of approximately three hours, especially as they were at this time on overtime and presumably had to justify their work in order to be remunerated.

At 14 Petawa Park, Ms. Warren and Dwyer family members were upset. Mr. Dwyer was placed under arrest for common assault and being unlawfully in a dwelling house with intent to commit an

indictable offence therein, and taken in a police car by Constable Gosse to the lock-up in St. John's. All police officers testified Calvin Dwyer co-operated with them, but that he denied the facts supporting an assault and unlawful entry as alleged by Rhonda Maloney in her statement. At the lock-up Mr. Dwyer was booked to be held for a court appearance the following morning. He was subsequently permitted to call his lawyer who secured his release that night. Sometime before midnight Mr. Dwyer was transported home in a Bugden's cab driven by Bruce Escott.

The evidence concerning the purpose of Mr. Dwyer's arrest varies as among the Royal Newfoundland Constabulary officers involved. Sergeant Hierlihy and Constable Sheppard both testified that Mr. Dwyer was arrested in relation to a child abduction. Sergeant Hierlihy stated he believed there was an assault involved. Constable Sheppard stated there was an issue of Mr. Dwyer being in the house at 38 McDonald Drive without permission. Constable Gosse testified that he and Sergeant Ewan Jones, after interviewing Maloney family members, decided together to charge Mr. Dwyer with common assault and being unlawfully in a dwelling house with intent to commit an indictable offence therein. Constable Gosse testified that he and Sergeant Jones determined it was necessary to arrest Mr. Dwyer in order to prevent continuation of the offence. Constable Gosse said his main concern was that Mr. Dwyer would return to the Maloney residence and that judicial release following an arrest would likely provide that he stay away from 38 McDonald Drive. Sergeant Jones' evidence on this point was similar.

The first allegation in Particular 3 is that the four officers, Sergeant E. Jones and Constables Sheppard, Hierlihy and Gosse acted in an overzealous fashion and used excessive display of force and intimidation in arresting Calvin Dwyer. I find it clear on the evidence that this is so. The involvement of three police cars with at least one of them using flashing lights arriving at a private residence in a residential neighbourhood, and the use of four police officers entering the home through two separate entrances, to effect the arrest of a man they had no reason to believe was difficult, let alone violent, is, in my view, acting overzealously and with excessive display of force and intimidation. This is especially so given the minor nature of the offences charged, and the fact that the Royal Newfoundland Constabulary, including one of the four arresting officers, characterized the taking of M by Mr. Dwyer as criminal child abduction when earlier the same day characterized the taking of M by Constable Maloney as a civil matter in which they would not become involved.

The second allegation in Particular 3 is that the arrest and the manner in which it was carried out were directly or indirectly influenced by Constable D. Maloney. Direct evidence of Constable Maloney's involvement in the events of January 13, 1994 was provided by Rhonda Maloney and the four police officers involved. There was no evidence that Constable Maloney directly tried to influence the arrest of Calvin Dwyer. He may have, but there is no evidence to that effect, and to find that he did so would be conjecture. However, I do find that the four Royal Newfoundland Constabulary officers were indirectly influenced by Constable Maloney in arresting Mr. Dwyer. I so find because there was no other explanation provided to justify the actions of the Royal Newfoundland Constabulary for the high-handed manner in which they dealt with Mr. Dwyer. Clearly, it was an attempt to humiliate and oppress Mr. Dwyer for the benefit of a fellow officer's personal spite.

Particular 4 alleges the arrest and incarceration of Mr. Dwyer were unnecessary. The evidence is clear that this is the case, and I so find. Of note is that there was no attempt to get a statement from Mr. Dwyer to get his version of the incident, nor did the Royal Newfoundland Constabulary interview Ms. Warren who was a witness, prior to arresting Mr. Dwyer. However, even accepting the facts as provided by Rhonda Maloney surrounding the incident at 38 McDonald Drive, there was no need to arrest Mr. Dwyer. To arrest and incarcerate on a charge of common assault which involved momentary squeezing of an arm leaving no marks or redness, is a departure from the usual police practice. Likewise, to arrest and incarcerate on a charge of being unlawfully in a dwelling house with intent to commit an indictable offence therein in these circumstances, is also unusual. Aside from it being far from certain whether Mr. Dwyer was unlawfully in the Maloney house, the offence he was intending to commit therein was, according to the Royal Newfoundland Constabulary officers, child abduction. This reasoning by the arresting officers is not consistent with their reasoning on similar facts earlier the same day, nor is it consistent with their actions at the Dwyer residence later, ie. they were not concerned about where the child M was, and indeed they left her with her mother without comment. Had they genuinely believed it was a case of child abduction, surely they would have dealt with the issue of where the child rightfully should be. Furthermore, it does not make sense that Constable Gosse and Sergeant Jones felt Mr. Dwyer's arrest and detention for court was necessary to prevent continuation of the offence. The Royal Newfoundland Constabulary officers left the child at 14 Petawa Park with her mother, so there was no need for them to be concerned that Mr. Dwyer might visit the Maloney residence again to fetch her. Their actions are not consistent with their own reasoning. My view is

reinforced by the evidence of Chief Power at page 56 of his testimony, where he clearly states that in his view the arrest was not necessary.

CHIEF POWER'S INVOLVEMENT

I turn now to the allegation against Chief Power that he improperly discriminated against and harassed Calvin Dwyer and Cheryl Warren and failed to monitor and insure that the Royal Newfoundland Constabulary complied with required standards of service in relation to Mr. Dwyer and Ms. Warren.

Chief Power was Deputy Chief of Operations at the Royal Newfoundland Constabulary at the time of the January 13, 1994 incidents. There were two Deputy Chiefs, the second such rank being held by a fellow officer in relation to support services. The two Deputy Chiefs were accountable to the Chief of Police, who was Edward Coady in January 1994. Chief Power became Acting Chief of Police in August of 1994 and officially became Chief of Police in February of 1995.

The complaint alleges that L.P. Power *as Chief of Police* did improperly discriminate There is evidence that Chief Power, as Deputy Chief of Operations, was in January 1994 responsible for the CID and Patrol Divisions. Accordingly I find that the times of his actual appointments as Acting Chief and Chief do not affect the complaint against him.

DEFENCES OF ISSUE ESTOPPEL AND ABUSE OF PROCESS

At this time I return to the Respondent's preliminary motion for dismissal of the complaint. At the conclusion of the evidence, Counsel for the Respondent further developed the arguments of issue estoppel and abuse of process, and provided authorities referencing these doctrines. I have reviewed these authorities and make the following comments.

There is some merit to the argument that these complaints should be estopped from prosecution as the issues raised in the particulars have been previously decided. However, one of the elements required for that argument to succeed is that the parties involved in the prior disposition of the issues are the

same. That is not the case with the present complaint, as Chief Power was not a party to the complaints made when these issues were previously decided. This distinction is important for the outcome of a complaint depends on the evidence against the particular subject of a complaint. Chief Power's behaviour in allegations in a complaint could be quite different than that of Constable Maloney, or any other police officer. The evidence really determines the outcome of the complaint. For this reason I find that the doctrine of issue estoppel cannot succeed in this case. I am cognizant of the fact that academics are suggesting the requirement that the parties be the same in order for the doctrine to succeed be eliminated, but Canadian jurisprudence has not embraced this concept yet and I am not prepared to do so in this case.

The abuse of process argument is perhaps more compelling, in that the complainants and the Police Complaints Commission could be seen to be attempting to do through the back door by complaining against Chief Power, what they could not do through the front door in their complaints against Constable Maloney, due to time limitations and failures to follow procedural requirements. However, again, the matter really depends on the evidence against the respondent. The drafting of the complaint as such, is not in and of itself an abuse of process. Consequently, I find that the abuse of process argument also cannot succeed for the complaint against the Chief, identically drafted, could be found to be made out if the evidence against Chief Power exists to support it.

CONCLUSION

Section 33(3) of the Royal Newfoundland Constabulary Act stipulates the sanction options which an adjudicator can recommend to the Minister as against the subject of a complaint. In my view, all of these sanctions are personal to a respondent, ie. are tailored to address the specific behaviour of the subject of a complaint.

There was little evidence of Chief Power's direct involvement in the particulars of the complaint. Chief Power acknowledges being aware on January 13, 1994, of the complaints to the Royal Newfoundland Constabulary by Calvin Dwyer and Cheryl Warren, and being aware of the dispatch of officers to 38 McDonald Drive later the same day. However, there is no evidence that he authorized, directed or was even aware of the arrest of Calvin Dwyer or the way in which it was carried out, until after it had

occurred. To punish him personally for this would be wrong, in my view. I have already determined the November 1994 incident to have been adequately investigated, so I am unable to find Chief Power responsible for any wrongdoing with respect to Particular 4. There is evidence which proves Chief Power's involvement in the inadequate investigation of the October 1994 incident alleged in Particular 1.

The evidence is that when Chief Power reviewed the internal investigation file concerning Lieutenant Ledwell's assessment of the October 16, 1998 incident, he concurred with it and failed to identify the deficiencies in the investigation. Considering the testimony of Chief Power, and of Sergeant Oliver and Lieutenant Ledwell on internal review procedures, I am satisfied that this review was carried out in good faith by Chief Power. I therefore would characterize Chief Power's direct involvement in the investigation of the October 16, 1994 incident as a judgment error, and not as behaviour which was intended to discriminate against or harass Mr. Dwyer or Ms. Warren, or as a deliberate failure to monitor his subordinates' work.

In conclusion, after considering all of the evidence, I am unable to find the complaint against Chief Power to be founded. Accordingly, I order the complaint dismissed.

There were no submission by any of the Parties as to costs. Accordingly, I make no order respecting same.

Lois R. Hoegg, LL.B.
Adjudicator