IN THE MATTER OF a complaint by Brian Richard Nolan 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, c. R-17.

BETWEEN:

ROYAL NEWFOUNDLAND CONSTABULARY PUBLIC COMPLAINTS COMMISSIONER

AND:

CONSTABLE KRISTA CLARKE (DAY), CONSTABLE LARRY HICKEY, CONSTABLE GLENN BARRY AND CONSTABLE LESTER PARSONS

DECISION

On July 19, 1993, Brian Nolan, (the Complainant) filed a complaint pursuant to the **Royal Newfoundland Constabulary Public Complaints Regulations** (the "**Regulations**") alleging misconduct on the part of a number of police officers, namely Constable Krista Clarke (Day), Constable Larry Hickey, Constable Glenn Barry and Constable Lester Parsons (collectively referred to as the "Respondents"). The complaint apparently followed the process

as provided in the **Royal Newfoundland Constabulary Act, 1992** (the "**Act**") and the **Regulations**.

The complaint was dismissed by the Chief of Police and the Complainant was so notified in a letter dated October 18, 1993. On October 20, 1993, the Complainant filed a Notice of Appeal (Form 7) with the Commissioner, appealing the Chief's dismissal of the complaint. The Commissioner did not dismiss the complaint and was unable to effect a settlement. Accordingly, he referred the matter on for adjudication.

On January 20, 1994, I was appointed as the Adjudicator for the complaint pursuant to s. 28(2) of the **Act**. The document referring the matter to me, named the four Respondents but did not provide any further details of the nature of the complaint.

On January 31, 1994, amendments were made to the **Regulations**. Among other things, these amendments provided for a document entitled "Reference to an Adjudicator" (Form 9) which is to contain the particulars of the allegation and specify the offence. On February 7, 1994, the Commissioner issued nine separate References to an Adjudicator; three in relation to Cst. Clarke and two in relation to each of the other officers. On March 3, 1994, I issued nine separate Notices of Public Hearing; one in relation to each of the References to an Adjudicator.

On March 25, 1994, each of the four Respondents appeared before me for the first time. At that time each officer denied the allegations. Subsequently, the parties were advised pursuant to s. 24(1) of the **Regulations** that if there were any preliminary objections they should be raised by a specific date. Counsel for the Respondents has raised a preliminary objection arising from the amendments to the **Regulations**.

The Respondents argue that at the time the matter was referred to me as Adjudicator, that is January 20, 1994, no mechanism existed either in the **Act** or **Regulations** to provide for particularization of the complaint against the Respondents. Section 21 of the **Regulations** as they existed at that time required the Commissioner to "forward the Notice and any notice of appeal filed ..." to the Adjudicator. The Notice referred to was the notice as defined by s 11(1) of the **Regulations**, which was only to be issued when the Chief did not dismiss the complaint when the matter was before him. As the Chief did dismiss the complaint here, there was no Notice prepared and therefore no Notice to be forwarded to the adjudicator. That left only the notice of appeal, which did not provide any cogent understanding of the allegation. As a result, they argue, while a hearing had been ordered, under the legislative and regulatory scheme in place, on January 20, 1994, there was no ability at that time to put before an adjudicator and the parties, a document which sufficiently particularized the conduct giving rise to the complaints. The Respondents argue that such a document, that is one containing sufficient particularization, would be necessary to enable the Respondents to make full answer and defence.

The Respondents argue further that as there was no scheme to provide them with sufficient details to make full answer and defence on January 20, 1994, they would not have been able to make full answer and defence if the hearing had proceeded under the **Regulations** existing at that time. Consequently, their inability to fully answer and defend the undefined complaint, would have prevented the adjudicator from proceeding, by virtue of the ***audi alteram partem*** rule and s. 7 of the **Canadian Charter of Rights and Freedoms**, thus providing the Respondents with a defence to the complaints.

The Respondents argue that insofar as the January 31, 1994, amendments to the **Regulations** cure the deficiency that previously existed under the **Regulations** and effectively allow sufficient details of the complaint to be provided in the Reference to an Adjudicator form, they have lost a defence which had not only existed, but had also vested, prior to the amendment. They say that the adjudication should proceed under the regulatory scheme existing on the day the matter was referred, January 20, 1994, and since that scheme would not allow a hearing in accordance with the principles of fundamental justice, I should decline to proceed any further.

The Commissioner, in reply, essentially argues that the amendments are purely procedural in nature and have no substantive element to them. They do not interfere with any "vested rights" or go to the jurisdiction of the adjudicator. Further, even if some "vested defence" was affected, without some evidence that the Respondents have suffered some substantial prejudice or injustice, it should have no impact.

In the time frame between January 20, 1994, and January 31, 1994, no procedural step occurred. The matter did not proceed to a hearing until March 25, 1994, by which time the Respondents had received copies of the References to me, providing particulars of the complaints against them.

In my view, the amendments to the **Regulations** are strictly procedural. The effect of the amendments is to provide for a procedure which requires that respondent police officers receive more details of the complaint they are to answer. The amendment created no new substantive provisions. There is no difference in the substance of the complaints against the Respondents, as a result of the amendments. There is, however, an improvement in the particularization of the complaints, which quite clearly puts the Respondents in a better position to answer and defend.

It is a long standing legal principle that a party has no right vested or otherwise to a particular procedure. Unless a change in procedure creates an injustice or interferes with something that has already occurred, a party has no right to complain about that procedural change. See **Republic of Costa Rica v. Eslanger**, [1876] 3 Ch. 62. The **Interpretation Act**, R.S.N. 1990, c. I-19, provides, at ss. 29(2)(c) and (d), for situations where there are statutory or regulatory changes to procedure, and requires that the proceeding continue under the new procedure, so far as it is possible. In my view, these sections are applicable here.

While I do not necessarily agree with the Respondents' argument that they had a defence prior to the amendments, it is not necessary to explore that further as if such a defence did exist it was purely procedural in nature. As they have no vested right to any procedure, they could have no vested procedural defence. Therefore, the procedural changes, which were made for the purpose of requiring that police officers who are the subject of complaint, receive sufficient particulars, did not remove any vested defence. It has not prejudiced the Respondents in any way insofar as their ability to answer the substance of the complaints is concerned. This matter can proceed using the procedure as amended without interfering with something that has occurred or creating any injustice. There will be no loss of any substantive right by so doing.

At the time the matter was referred to me on January 20, 1994, I had jurisdiction to deal with this. As an administrative tribunal, my duty then (as now) was to act in accordance with the principles of fundamental justice. Whether I could have ordered particulars, if requested, is a question for another day. However, as no procedural steps were taken prior to either the change in the **Regulations** or the provision of the Notice to Adjudicator, there was no prejudice to the Respondents. The hearing did not commence and they were not called upon in any way to answer until the charges were properly particularized.

The authorities relied upon by the Respondents, **Re Davis and Newfoundland Pharmaceutical Association** (1977), 16 Nfld. & P.E.I.R. 293 (Nfld. S.C., T.D.) and **In Re Daigle and in re Canadian Transport Commission** (1975), F.C. 8, to support the

application of the ***audi alteram partem*** rule are clearly distinguishable and not applicable here. In each of those cases there was a failure to properly advise the party in relation to whom the hearing was being conducted of the allegations before the hearing started. Additionally, in each case the party was not given full opportunity to respond. Such is not the situation here.

For the foregoing reasons, I reject the arguments raised by the Respondents, and will continue with the hearing on the date set, July 5, 1994.

DATED at St. John's in the Province of Newfoundland, this day of June, 1994.

J. DAVID EATON
ADJUDICATOR