

IN THE MATTER OF A PUBLIC HEARING
OF THE COMPLAINT OF GREGORY PARSONS

BETWEEN
THE ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSION ("Commission")
AND
CONSTABLE DONALD MALONEY, RESPONDENT
("Complaint")

PENALTY DECISION

In an earlier decision, dated November 16, 2001, I found that the Complaint against Constable Maloney had been established and that he was guilty of conduct unbecoming a police officer as charged. The specific charges were first, that Constable Maloney arrested and detained Mr. Parsons without good and sufficient cause contrary to s. 3(1)(a) of The Royal Newfoundland Constabulary Public Complaints Regulations ("*Regulations*"). The second charge was, that Constable Maloney neglected or omitted to properly and thoroughly investigate a complaint by a Corey Evans, which caused the arrest, charging and imprisonment of Mr. Parsons without good and sufficient cause and/or reasonable and probable grounds contrary to s. 3(1)(d) of the *Regulations*.

This decision follows a hearing on December 10, 2001 concerning the appropriate penalty to be imposed upon Constable Maloney. Submissions were heard from counsel for the Commission, Peter O'Flaherty, for the Respondent, Randy Piercey, for the Chief of the Royal Newfoundland Constabulary, Paul Noble and for the Complainant, Glenda Best. I am grateful for the views of all counsel and the law skillfully presented which was helpful in coming to my decision.

The Royal Newfoundland Constabulary Act, 1992 ("Act") at section 33(l) provides the penalty options that are available to an adjudicator where the allegations in a complaint against a police officer have been proven.

The Complainant, Gregory Parsons also testified as to the impact that Constable Maloney's conduct had on his life. Mr. Parsons recalled that his liberty was lost and because he was already on bail pending trial on a murder charge, stricter bail conditions were imposed upon him. At the time of his arrest in April 1997, Mr. Parsons had been operating his own business, a gym, for just short of two years. He testified that because of the criminal charges and the associated negative media coverage this business was closed. Mr. Parsons was unable to quantify any specific financial loss. On a personal level, Mr. Parsons testified that the criminal charges basically destroyed his life, that he is still scrambling to get reestablished and he is still partially relying upon social assistance. He has completed training as an emergency response technician but has not been fully employed in this field. Mr. Parsons indicated that he has a young family that was negatively affected by the publicity of his criminal charges.

All counsel agreed, and I accept that the purpose of the discipline proceedings under the *Act and Regulations* is primarily corrective and rehabilitative as opposed to punitive to the Respondent or compensatory to the complainant. The outcomes of these proceedings should also serve as deterrence both to the Respondent individually and the police generally with respect to the impugned conduct.

In this case the misconduct, wrongful arrest and neglect of duty, was serious resulting in Mr. Parsons being imprisoned for four days at a time when he was facing other serious criminal charges. There was a five-month period that elapsed between the arrest and the stay of charges in this case. In addition, there have been significant impacts on Mr. Parson's personal life in terms of his reputation, employability and closure. The Respondent and police generally need to be prevented from exercising the power of arrest without prior thorough investigation. The incident resulting in Mr. Parsons arrest occurred in April of 1997. The discipline hearing process began in May 2000 and is now just concluding.

The Respondent has had an otherwise commendable seventeen years of service with the RNC during which he completed ongoing training and had no prior discipline record. Constable Maloney's service record, which was before me by consent, included numerous instances of recognition and commendation for his exemplary duty from the RNC, RCMP and RNC Association. In addition, there has been no evidence before me of any malice toward Mr. Parsons on the part of Constable Maloney in this case.

Based upon penalties ordered in prior comparable discipline cases the Commission recommended that, in this case, reprimands on each charge as well as a period of suspension of between five and seven days on each charge concurrently, since both charges related to the same misconduct, should be imposed.

Counsel for Constable Maloney argued that both the fact that there was no evidence of malice on Constable Maloney's part and that he has had an otherwise unblemished and exemplary seventeen-year career with the RNC should be mitigating factors. Also, he submitted that the discipline hearing spread out over an eighteen month period with its attendant publicity has been sufficient deterrence for Constable Maloney. It was therefore suggested that in these circumstances it would be sufficient for me to impose a reprimand in respect of each charge on Constable Maloney's file.

The previous decisions by other adjudicators under the Act, which I have considered, are the April 24, 1998 decision concerning Constable P. Layman and the August 30, 1996 decision concerning Constable K. (Day) Clarke and Constable L. Hickey. Both cases involved improper arrests and detention. Both cases recognized the seriousness of the failure to properly exercise the power of arrest.

In the Layman case the penalty was a four-day suspension without pay in addition to reprimands on each charge where the complainant had been in custody 48 hours and there was an interval of 6 months between arrest and acquittal. In that case, there was no evidence of an exemplary service record on the part of Constable Layman.

In the Clake/Hickey case the penalty for each police constable was a five-day suspension. In that case, the adjudicator found that a reprimand was not sufficient to reflect the seriousness of the police constables failure to meet their lawful obligations prior to arrest.

Also, in that case there was evidence of malicious behavior by the police constables toward the complainant.

Considering the above factors and cases I have determined in this case, pursuant to s. 33(l) of the Act, that a four day suspension without pay on each charge, served concurrently, would be appropriate.

The only request as to Costs in this hearing was from Ms. Best, Counsel for the Complainant. I agree with Mr. Noble and Mr. Piercey that the Act does not provide the authority for me to make an order concerning the costs of the Complainant.

It is therefore ordered that Constable Donald Maloney be suspended without pay for four days with respect to each of the charges established against him. The suspension is to be served concurrently since both charges arose from the same misconduct.

DATED at the City of St. John's, in the Province of Newfoundland, this 29th day of January, 2002.

JOAN F. MYLES, Adjudicator