

IN THE MATTER OF A PUBLIC HEARING
OF THE COMPLAINT OF GREG PARSONS
BETWEEN
THE ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSION
AND
CONSTABLE DONALD MALONEY, RESPONDENT

RULING

This Ruling is in relation to preliminary matters argued before me as Adjudicator on May 29, 2000. The reference to the adjudicator was dated the 29th day of October, 1999 and received November 3, 1999 (referred to as the “Reference”). A copy of the Reference is attached to this Ruling together with a copy of the Complaint of Gregory Parsons dated the 22nd day of October, 1977 (referred to as the “Complaint”). The Reference relates to Constable Donald Maloney of the Royal Newfoundland Constabulary. It was referred to me for hearing pursuant to s. 28 of the *Royal Newfoundland Constabulary Act, 1972, S.N. 1992, c. R-17*, (referred to as the “Act”).

At the commencement of the hearing of the reference on May 29, 2000, preliminary objections to my jurisdiction as adjudicator were raised on behalf of the Respondent. At the same time, the Commissioner, pursuant to s. 23.1 of the Act, requested an amendment to the Reference. The Respondent’s Notice of Objection dated the 23rd day of May 2000 was served on me as Adjudicator, and Counsel for the Commission, and entered as Consent Exhibit C#2 at the Hearing on May 29, 2000.

Appearing at the Hearing on May 29, 2000 were for the Commission Mr. Peter O’Flaherty, for the Respondent Mr. Randy Piercey, for the Complainant Mr. Steve Marshall, and for the Chief

of Police, Mr. Paul Noble. Mr. Noble requested standing which was consented to by all parties and which I confirmed. All Counsel present made oral submissions and the written briefs of argument for both the Respondent and the Commission were entered at the hearing as Consent Exhibits C#3 and C#4. The requested amendments for the Reference were submitted as Consent Exhibit C#5.

At the conclusion of the Hearing on May 29th, all parties agreed to delay any resumption of this Hearing to allow for receipt and consideration of the Ruling of another adjudicator on preliminary objections to jurisdiction. This Ruling was from adjudicator Lois Hoegg with respect of complaints of Rosemary Tee and Brian Lahey against certain Constables of the Royal Newfoundland Constabulary (the "Hoegg Decision"). I determined therefore that any further submissions which the parties wished to make following their receipt and review of the Hoegg Decision should be received by August 14th. The Hearing was adjourned to the date of the 15th day of September, 2000 to receive my Ruling on the preliminary objections and application to amend the Reference. Accordingly, Supplementary Briefs of Argument on the Preliminary Objections were received from the Commission on July 20, 2000, from the Respondent on August 11, 2000, and from the Chief of Police August 14, 2000. These submissions will be included in the record of the hearing upon the resumption of the hearing of this Reference on September 15, 2000.

BACKGROUND

On April 18,1997, Corey Evans made a complaint to the RNC that he had been assaulted by Gregory Parsons (“Parsons”) and David Woolridge (“Woolridge”) in an incident on George Street in St. John’s. Parsons was arrested by the Respondent, Cst. Donald Maloney. Parsons was charged with assault causing bodily harm and breach of a recognizance. These criminal charges were stayed September 15, 1997.

In the approximately two years preceeding his arrest on April 22,1997, Parsons had been convicted and sentenced to life imprisonment for the murder of his mother, Catherine Carroll. The murder trial had been highly public. After his conviction, new scientific evidence was brought froward and the conviction determined to be unfounded. This is the context from which Parsons arrived at the 1997 encounters with the RNC. It is fair to assume Parsons feared history may have been repeating itself.

On October 22,1997, Parsons filed the Complaint with the Commission. The Complaint broadly summarized, included and related to:

1. Parsons treatment by various members of the RNC over two years prior to the complaint in relation to the investigation of the murder of his mother, Catherine Carroll;
2. Parsons false arrest and the police investigation arising from the April 22,1997 arrest (re: Cst. Maloney complaint); and
3. The excessive force used by police with police dog to detain Parsons in July,1997(re: Sgt. Adams).

The RNC suspended the investigation of the Complaint on November 6, 1997 due to an ongoing criminal investigation. On March 10, 1998 the RNC notified Parsons that the suspension was lifted with respect to the two aspects of the Complaint relating to Cst. Maloney and Sgt. Adams. They also stated that the aspect of the Complaint dealing with the various members of the RNC associated with the Catherine Carroll murder investigation remained suspended.

On May 25, 1998, the investigation of the complaint against Cst. Maloney was concluded by the RNC. The Chief of Police wrote Parsons on June 24, 1998 advising him that the complaint against Sgt. Adams was dismissed.

July 17, 1998 Parsons filed his appeal with the Commission.

July 31, 1998 Chief of Police wrote to Parsons advising him the complaint against Cst. Maloney was dismissed.

A. **PRELIMINARY OBJECTIONS**

The three objections raised by the Respondent all concerned time limits under the Act, which if found to be breached, would result in my loss of jurisdiction as Adjudicator to hear this Reference. The Respondent and the Commission agreed that the language of the Act was mandatory in this respect. This position is supported by the case law placed before me.

Objection No. 1

The original Complaint of Gregory Parsons was not filed within the time period prescribed by s. 22(4) of the Act.

The Complaint was filed with the Commission on the 22nd day of October, 1997, approximately three weeks after the staying of criminal charges against him on 15th day of September, 1997. These criminal charges arose from Parsons' arrest on the 22nd day of April, 1997 by Constable Maloney.

Section 22(4) of the Act provides the time period within which a complaint must be made as follows:

“A complaint made under subsection (1) shall be made within three months after the alleged misconduct occurs or, in the case of a continuing misconduct, within 3 months after the last incidence of the alleged misconduct.”

The Respondent argued that the alleged misconduct was restricted to the date of Parsons' arrest on the 22nd day of April, 1997, and that therefore the three months prescribed by s. 22(4) expired the 22nd day of July, 1997.

The Commission did not agree with this characterization of the alleged misconduct, and submitted that the alleged misconduct occurred over the course of the entire investigation of the criminal charges starting with the initial complaint of Cory Evans on April 18, 1997 until the criminal charges against Parsons were stayed on the 15th day of September 1997. The Commission argued that the limitation period under s. 22(4) therefore did not start until after the charges against Parsons were dropped.

Considering all of the circumstances of the Complaint, I am inclined to adopt the above interpretation offered by the Commission as to the alleged misconduct relating to the entire investigation culminating with the stay of criminal charges against Parsons on the 15th day of September, 1997. Therefore, time under s. 22(4) started to run from the date of the stay of criminal charges, and Parsons' complaint was filed within the three month period specified under the Act. My finding in this regard is consistent with the nature of the Complaint, and the fact that he did file the Complaint so quickly following the stay of the criminal charges. Notably, the Complaint does not specify the arrest date on the 22nd day of April, 1997, as the specific alleged misconduct. Rather, it is the incident of arrest “leading to a charge of assault causing bodily harm being laid without proper investigation and then stayed. Numerous witnesses said that Parsons was not involved.” These words support the view that the alleged misconduct was not restricted to the false arrest on the 22nd day of April, 1997, but rather was directed to the entire investigation of the criminal complaint, up to and including the stay of criminal charges against Mr. Parsons on September 15, 1997.

OBJECTION NO. 2**Investigation was not completed within the time period prescribed by s. 24(3) of the Act.**

Section 24(3) of the Act reads as follows:

“Upon receipt of a complaint under subsection (1), the chief, or the deputy chief shall investigate the complaint and that investigation shall be completed as soon as is practicable but no later than 3 months from the date the complaint is filed or received.”

The Respondent submitted that the chief had three months from October 23, 1997 to complete the investigation, unless such investigation were properly suspended pursuant to s. 43 of the Act.

Section 43(1) of the Act reads as follows:

“Where a criminal investigation is being conducted or a prosecution is commenced under an Act of the Parliament of Canada or another Act relating to the subject-matter of the complaint, proceedings under this Part shall be suspended pending a decision on that prosecution.”

The Respondent argued that there was no proper suspension of the investigation of the Complaint pursuant to s. 43(1) since the investigation by the chief was not completed until July 31, 1998. Therefore, the three month time period under s. 24(3) of the Act had been breached and as Adjudicator I have no jurisdiction over the Complaint. The Respondent’s argument that the suspension was not justified is based on the assertion that the criminal investigation of the charges against Parsons and Woolridge, ended on the 15th day of September, 1997, the date the criminal charges against Parsons and Woolridge were stayed.

The Commission argued that the time limit under s. 24(3) of the Act in this matter was extended properly upon suspension of the investigation of the Complaint pursuant to s. 43(1). Mr. Parsons received a letter dated November 6, 1997 from Inspector Roche, the officer assigned the investigation of the Complaint, indicating that, “We are suspending this investigation pending the outcome of a ongoing criminal investigation.” In response to the Respondent’s argument that there was no ongoing criminal investigation related to the Complaint, the Commission argued that even if there were no ongoing criminal investigation, there was an ongoing prosecution relating to the subject matter of the Complaint within the meaning of s. 43(1) of the Act. The Commission argued that neither it, nor the Adjudicator, had authority under the Act to investigate or challenge the reason for the Chief’s suspension, nor for the Adjudicator to inquire into the decision to suspend pursuant to s. 43 of the Act.

I agree that there is no explicit authority for me as Adjudicator under the Act to inquire or investigate or challenge the reason for the suspension by the Chief of Police. Whether as an Adjudicator I have that authority outside the Act has not been argued nor authorities for such a proposition placed before me for consideration. In any event, I think as Adjudicator I need to be satisfied that s. 24(3) is complied with in order for me to have jurisdiction over the Reference and complaint. That is, I need to be satisfied there was a suspension and that, taking the time of suspension into account, the investigation was completed within the time required by the Act.

The only evidence before me is the letter of November 6, 1997 from Inspector Roche, which states that the investigation was being suspended pending the outcome of an ongoing criminal investigation. I have no reason or evidence before me to doubt the bona fides of that reason or decision for suspension. Although this may be sufficient, in the absence of evidence to the contrary, to satisfy me that the investigation of the complaint was properly suspended, I don't accept the Respondent's assertion that the only possible criminal investigation ongoing at the time the suspension was that of the assault of Cory Evans. I do accept the position of the Chief outlined by his Counsel Paul Noble during the May 29, 2000 Hearing (Reference page 43, Transcript of May 29, 2000 Hearing). Mr. Noble indicated that, in fact, the ongoing criminal investigation referred to in the November 6, 1997 suspension letter was the investigation or reinvestigation of Catherine Carroll's murder. I found comfort in the submission of Counsel for the Chief that there was an investigation or re-investigation of the murder of Catherine Carroll, which precipitated the suspension under s. 43(1) of the Act. I am of the view that such criminal investigation would be related to the Complaint, bringing it into accord with the rationale of Orsborn J. in his Decision of the Rosemary Tee complaint, to which I was referred by both Counsel for the Commission and the Respondent. Clearly, the criminal investigation concerning the murder of Catherine Carroll is related to the subject matter of the Complaint.

Ultimately, I believe I can satisfy myself that s. 24(3) of the Act has been complied with, in the circumstances of the Complaint, without reviewing the Chief's decision to suspend.

In any event, I find the investigation of the Complaint was suspended pursuant to s. 43(1) of the Act, and therefore, the time limit under s. 24(3) of the Act was extended and reading that section, together with Regulations s. 7(d), the running of the three months limitation period was also suspended. Further, I accept the calculation of time outlined by the Commission at paragraph 31 of its Brief on Argument dated May 29, 2000 and also outlined in the Transcript of the Hearing May 29, 2000 at pages 27-28. This calculation demonstrates that, taking into account the period of suspension of the investigation of the Complaint a total of ninety-one days was used within the available period of ninety-two days. Therefore, the investigation by the Chief was completed within the limitation period set out in s. 24(3) of the Act.

Counsel for the Chief, Mr. Noble, confined his submission both on May 29, 2000 and in his further submission dated August 14, 2000, to Objection No. 2. The Chief apparently supported the Commission's argument that the Adjudicator had no authority to reconsider the Chief's decision to suspend the investigation of Parsons' complaint. I would note that at page 38 of the Transcript of May 29, 2000 Hearing Counsel for the Chief was recorded as arguing that I do not have the jurisdiction or authority to consider whether the Chief's investigation was completed within the time periods required by s. 24(3) of the Act. I do not agree with this assertion for the reasons I have outlined above.

I make the observation that a finding that there was a breach of s. 24(3), due to an error on the part of the RNC in suspending the investigation, would have the ironic result of the complainant bearing the burden of such mistake. Such a result would be contrary to the purpose of the Act, namely, allowing the public access to a complaint process concerning unfair treatment by the police and fostering a responsible and accountable police force.

OBJECTION NO. 3**Gregory Parsons' Appeal of the Chief of Police's Decision was not filed within the time period prescribed by s. 25(4) of the Act.**

Section 25(4) of the Act reads as follows:

“A Complainant who is not satisfied with a decision of the chief or deputy chief under subsection (1) may, within fifteen 15 days of his or her receipt of that decision, appeal the decision by filing an appeal with the Commissioner.”

The Respondent's submission is very simple. Parsons had no right to appeal the dismissal of his complaint until the July 31, 1998 letter from the Chief advising that the complaint against Constable Maloney had been dismissed. Further, since Parsons filed his appeal on July 17, 1998 in advance of any decision by the Chief concerning the complaint against Constable Maloney, the Notice of Appeal filed by Parsons was not valid.

The Commission argued that Parsons' Appeal was properly filed in compliance with the s. 25(4) time period. Parsons filed one complaint against two officers and the one complaint was investigated separately by the Chief with two separate letters to Parsons advising of the Chief's decision in each. Each decision denied a separate aspect of Parsons' single complaint. Parsons, by way of his filing the Appeal on the 17th day of July, 1998, simply appealed both decisions concerning Constables Maloney and Adams. The Commission also argued that there was no prejudice to Constable Maloney, since the Chief's Decision concerning him was dated July 31, 1998 and an investigative report of Sergeant Burt had been completed May 25, 1998, that is, well before the Parsons' Appeal of the Chief's Decision.

The Commission directed me to s. 40(b) of the Act and indicated that Parsons would be deemed to have received the Chief's Decision seven clear days after June 24, 1998. The Commission then outlined at paragraph 35 of its May 29, 2000 submission the chronology of the receipt of the Chief's Decision and Parsons' Appeal. He calculated that between July 3rd, the first day from which the fifteen days would apply, until and including the day the Appeal was filed on July 17th, was a total of fifteen days. As such, the appeal was filed within the time period prescribed by s. 25(4) of the Act.

On the face of the facts as outlined by the Respondent, it would appear that Parsons' Appeal was untimely as it preceded the decision of the Chief concerning the complaint of Constable Maloney. However, in my view, it is sufficiently clear in the Notice of Appeal that Parsons understood the complaint against Cst. Maloney and Sgt. Adams had been separated by the Chief. Further, it is apparent that he viewed the letter of June 24, 1998 from Deputy Chief Oliver as the Decision concerning Sgt. Adams. However, he also mentions the case against Cst. Maloney, and it is evident that he wanted both complaints pursued and dealt with as quickly as possible. Parsons obviously recognized he had to file an appeal and was concerned with the timeliness of doing so, as is evidenced by his call to the Police Complaints Commission recorded in its' communication log. It is reasonable in my view to assume that since Parsons did not file a separate Notice of Appeal after the July 31, 1998 dismissal of the complaint against Cst. Maloney, that he assumed the previously filed Notice of Appeal, i.e. filed on July 17, 1998,

would cover the complaints against both officers. Indeed, the Complaint included alleged misconduct on the part of both Cst. Maloney and Sgt. Adams.

I find it is reasonable in the circumstances to adopt the calculation of time offered by the Commission in its original submission of May 29, 2000 at paragraph 35, to establish that Parsons' Appeal was filed within fifteen days of the Chief's Decision.

I therefore find the Appeal by Parsons validly filed pursuant to s. 25(4) of the Act. I make this finding without reference to the Hoegg Decision. I note the Commission outlined the Hoegg Decision would apply to this objection and the Respondent disagreed. However, I do not find it necessary to support my finding with reference to the Hoegg Decision.

B. APPLICATION FOR AMENDMENT OF THE REFERENCE.

At the conclusion of the Commission's submission on May 29, 2000, Mr. O'Flaherty made a motion or application that the Reference be amended (see Transcript May 29, 2000 Hearing page 33-36). The amendments requested were submitted as Consent Exhibit C#5 at the May 29th Hearing.

I was referred to the power of the Adjudicator to make amendments where there is an objection to the reference pursuant to s. 23(1) of the Act. The Commission argued that the Respondent's first objection was to the fact that the Reference cited only April 22, 1997 as the date of misconduct relevant to its complaint against Constable Maloney.

I accept this request and agree that I have the authority to make such amendments in pursuance of s. 23(1) of the Act. Therefore, I will allow the amendment to the Reference as set forth in Consent Exhibit #5 at the May 29, 2000 Hearing. I allow the amendment because it will assist in the full hearing of this complaint, is consistent with the Act, and my findings concerning the preliminary objections raised by the Respondent.

In accordance with s. 23(1) of the Act, upon the adjournment of the proceeding on September 15, 2000, the police officer will have sufficient time to prepare his answer to the amended Reference.

C. RESULT

The result of my findings on the preliminary matters is that there has been compliance with all the time limits of s. 22(4), s. 24(3) and s. 25(4) of the Act. Therefore, I find that I have jurisdiction to proceed to hear the Parsons' complaint against Constable Maloney. Secondly, I have agreed to allow the application to amend the Reference as outlined above.

D. **TIMING**

Since I have concluded the rulings with respect to the preliminary matters, it is in order to proceed with the hearing of the Complaint at a date to be agreed upon by all parties. Should no date be agreed upon by October 13, 2000, I order that this proceeding will adjourn until 9:30 a.m., Monday, October 16, 2000 at a place to be determined.

DATED at the City of St. John's, in the Province of Newfoundland, this 15th day of September, 2000.

JOAN F. MYLES, Adjudicator