

**IN THE MATTER OF s. 28 of The Royal
Newfoundland Constabulary Act, 1992,
S.N.L. 1992, c. R-17, as amended**

**AND IN THE MATTER OF a Complaint by
Wayne Thompson, dated 8 August, 2001**

BETWEEN:

**THE ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSION**

AND:

CST. EDMUND OATES

**DECISION ON APPLICATION FOR
DISCLOSURE OF SETTLEMENT DISCUSSIONS**

DECISION ON APPLICATION FOR DISCLOSURE OF SETTLEMENT DISCUSSIONS

1. This is an application by Cst. Oates for full disclosure of the steps taken by the Commissioner in attempting to settle this complaint under s. 26(3) of **The Royal Newfoundland Constabulary Act, 1992** S.N.L. 1992, c. R-17, as amended (the **Act**).
2. On 11 April, 2002, the Commissioner wrote the Complainant, Mr. Wayne Thompson, acknowledging receipt of correspondence dated 11 March, 2002, in reply to proposed terms of settlement of the complaint against Cst. Oates. While this letter was copied to Cst. Oates, Cst. Oates had not been a party to, or privy to, any discussions or correspondence concerning possible settlement. The Commissioner's letter indicates that as the proposal for settlement was rejected, the matter was being referred to an adjudicator.
3. This matter was referred to me for adjudication that same day, 11 April, 2002.
4. Counsel for the applicant, Mr. Pike, seeks disclosure of the settlement discussions in order to make full answer and defence. Mr. Pike further argues that settlement efforts under s. 26 "may well constitute a statutory prerequisite to a hearing under the legislative scheme" and accordingly, the officer should be entitled to disclosure so that the settlement efforts might be challenged if necessary.
5. Counsel for the Commissioner, Mr. O'Flaherty, argues that the Commissioner is not obliged to engage in settlement discussions, but may do so if appropriate. Therefore, whether the Commissioner does so or not, there is nothing to challenge. Mr. O'Flaherty further argues that at common law, there is no requirement to disclose settlement

negotiations or discussions and the commissioner had disclosed all material required to be disclosed at common law.

6. I agree that s. 26 of the **Act** puts no obligation on the Commissioner to attempt a settlement before referring a complaint for adjudication. It is not a prerequisite to adjudication. Whether the Commissioner chooses to do so or not is up to the Commissioner based upon the information known to him. I do not see any basis for challenging the Commissioner's efforts (or lack thereof if that was the case) at settlement.
7. The disclosure obligations of the Commissioner have been previously addressed in **Royal Newfoundland Constabulary Public complaints Commission v. Gosse** (13 Mar, 2001, Adjudicator, Linda Rose, Q.C.)
8. The common law seems clear that settlement discussions are protected from disclosure, whether in civil or criminal proceedings. Without this protection, few parties would be prepared to engage in discussions for fear that any concession would later be used to their detriment if a settlement was not reached. (See Sopinka, Lederman & Bryant, **The Law of Evidence in Canada** (2nd ed.) Butterworths pp. 807-808 & 810).
9. While settlement discussions are protected, if during those discussions any factual information not previously disclosed becomes known, it is not only not protected, but it must be disclosed. Therefore, if any factual information was revealed during settlement discussions, such information must be disclosed. It is the factual information and not the discussions that related to full answer and defence. Otherwise, the

discussions between the Commissioner and the Complainant are protected from disclosure.

10. Therefore, there will be no order for disclosure of any discussions or correspondence between the Commissioner and Mr. Thompson except to the extent that factual information not previously disclosed became known during such discussions or correspondence. Any new factual information must be disclosed.

J David Eaton Q.C.
Adjudicator

Counsel

Mark Pike for Cst. Oates

Peter O'Flaherty for the Commissioner