

NOVA SCOTIA POLICE REVIEW BOARD

IN THE MATTER OF: *The Police Act, R.S.N.S. 1989, Chapter 348 and the Regulations made pursuant thereto*

- and -

IN THE MATTER OF: A request, filed by **JOACHIM H. RICHTER**, Complainant, for an extension in time to file a complaint against **SERGEANT CHATTERTON** of Halifax Regional Police Service.

BEFORE: Jean McKenna - Alternate Chair
Linda Fraser - Member
Brad Barton - Member

COUNSEL: Mr. Patrick Duncan - Solicitor on behalf of Sergeant Chatterton
Mr. Joachim Richter on behalf of himself

HEARING DATE: Wednesday, February 18, 1998

PLACE Hearing Room - 1601 Lower Water Street, Suite 300

DECISION DATE: Written Decision - April 9, 1998

DECISION: Appeal Granted in Part

This is the application of Joachim H. Richter for an extension of time to file a complaint. Mr. Richter represented himself at the hearing of this matter; Sgt. Chatterton and Sgt. MacLellan, the officers complained of, were represented by Mr. P. Duncan.

The allegation is as follows:

- 5(1) A member of a police force commits a disciplinary default where the member
 - (c) neglects duties by
 - (i) neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member of a police force,
 - (d) engages in deceit by
 - (ii) wilfully or negligently making a false, misleading or inaccurate oral or written statement or signing a false, misleading or inaccurate written statement pertaining to the police officer's official duties,

Form 5 (Exhibit 3) alleges a date of incident of July 22, 1997. It shows the date and time of the report as being July 28, 1997, therefore on the face of it, no extension is required. However, attached to Form 5 is correspondence to the Chair of the Police Commission dated October 15, 1997. That correspondence refers to incidents which arose in March, 1996.

The basis of the allegations is; a) provision of false information to the Department of Justice in relation to Mr. Richter's application for compensation to Victim's Services, and;
b) failure of Halifax Regional Police to investigate an alleged child abduction

There is a complicated history underlying this complaint. On an extension application, the Board is usually hesitant to engage in any in depth examination of the allegations. In this case, it was necessary to do so to some extent in order to determine if in fact the complaints are out of time.

It appears that in March and April of 1996, Mr. Richter and his ex-wife were going through a custody dispute. Mr. Richter was represented by Solicitor Richard Arab. Mrs. Richter was represented by Solicitor Clare MacNeil.

Mr. and Mrs. Richter were both originally from Botswana. Mrs. Richter initially had been granted custody of their child by the Nova Scotia Family Court (date unknown), and Mr. Richter became concerned at some point that Mrs. Richter was going to leave the country with the child, contrary to the existing custody order. This apparently led to contact with Sgt. Chatterton of the Halifax Regional Police.

The incident report (attached to Exhibit 4) detailing that contact is dated April 4, 1996. The report appears to be a summary of discussions that Sgt. Chatterton had with Mr. Arab.

According to that report, Mrs. Richter had previously reported her passport to be stolen, and the investigator also noted that her daughter's passport was confiscated by Canadian authorities. Sergeant Chatterton apparently had contact with the Botswana Embassy confirming that Mrs. Richter had contacted them, "told them distressing stories", and requested travel documents. These were issued by Botswana authorities on March 25, 1996. The report notes, "Mrs. Richter has been awarded custody for the time being, although case has not yet been finalized".

According to the incident report, Mr. Richter and his Solicitor were requesting that Halifax Police attempt to contact the R.C.M.P. and also investigate any travel arrangements that Mrs. Richter might be making or attempting to make. The whereabouts of Mrs. Richter was apparently unknown at the time. The incident report is the only police generated document before the Board.

At some later unknown date Mr. Richter made an application to the Family Court for a variation of the original order, apparently to gain custody in order to prevent the removal of the child from the country. Mrs. Richter did not appear in Court in response to that application; Family Court thereupon issued a province wide warrant for her arrest, and on June 28, 1996 made an Ex Parte Order giving interim custody to Mr. Richter. That order was issued on July 5, 1996.

It appears that Mrs. Richter and the child did in fact leave Canada.

Richter testified that he met with Sgt. Chatterton in August or September of 1996, and had a second meeting with Sgt. MacLellan. He also testified that he sent numerous letters to Maclellan, Chatterton and the Chief, on an ongoing basis, until he moved to Ontario in November 1996. Exhibit 7 was introduced, which is correspondence from Richard Arab to Sgt. Chatterton dated August 1, 1996. It includes 13 pages of details describing the location of Mrs. Richter's home and environs. Those details appear to have been prepared by Mr. Richter.

Mr. Richter alluded to the fact that at some point in the course of these events, he was being treated as an inpatient at the Nova Scotia Hospital. He also received treatment in Ontario, and submitted to the Board a medical report prepared by a Dr. Gawlick for the Ontario Ministry of Community and Social Services. That report shows a diagnosis of "major depression, adjustment disorder with depressed mood; post traumatic stress disorder". Mr. Richter says that his mental health impeded his ability to deal with the matters. He did, however, by his own evidence, have discussions with the police in August and September 1996, and applied to Victim's Services in October 1996. In cross-examination, he said that he was aware of the October application but didn't know what it meant. He implied that the application was made on his behalf by someone else, but at the same time, emphasized that Mr. Arab was not representing him at the time, although perhaps providing occasional assistance.

Mr. Richter testified that by November 1996, as a result of ill health, he was "no longer able to pursue the matter". He alleges that he was in such a state of mental anguish and

turmoil that he did not fully focus his attention on the process. At that point he moved to Ontario. He testified in cross-examination, however, that he did provide Victim's Services with a change of address, as the issue was very important to him.

In direct evidence, he said that the move to Ontario "interrupted the matter for a few months". In cross-examination, he confirmed that he lived in Ontario from January until July, 1997, but that he possibly had some telephone contact with authorities in Nova Scotia during that time.

At some point Mr. Richter apparently obtained through his own investigations some further information concerning the alleged abduction of his daughter. In the correspondence to the Chair of the Board attached to form 5, he refers to the admission of third parties as to their involvement in the removal of his daughter from "Toronto to Halifax"; to possible financial assistance to his wife; to an embarkation date of March 27, 1996; to Canadian Airlines passenger lists; and finally, to correspondence between an Anglican Church Cleric, Mrs. Maynard, to his wife. He testified that at some point (date unknown) he asked the Halifax Regional Police to question members of the Anglican Church, and alluded in cross-examination to the fact those church members would not respond without a subpoena. The Board has no evidence as to when he acquired the various pieces of information, or when he asked police to act on them.

Exhibit 4, introduced by Mr. Duncan in cross-examination of Mr. Richter, is correspondence from Victim's Services to Mr. Duncan. That correspondence indicates that on

October 21, 1996, prior to leaving Nova Scotia, Mr. Richter made an application for compensation to Victim's Services. Pursuant to that application, Victims' Services acquired the above noted incident report from Sergeant Chatterton. The incident report refers to having attached "the court order re: custody and notes from lawyer". The report makes no reference to the arrest warrant, nor did it refer to the variation of the order. There is no evidence before the Board that Halifax Regional Police were aware of, or had copies of, those documents. They may or may not have been part of the information provided by Richter to the police in his letters and meetings. Presumably, Mr. Richter or his counsel had copies of these Family Court documents, as they were issued on July 5, 1996.

Exhibit 4 discloses that in its response dated December 3, 1996, Victims' Services denied his application for compensation. It was noted in that reply (Exhibit 5) that, "The police report received does not provide sufficient evidence to be able to determine that you were injured as a result of an eligible criminal offence as required by the *Victims Rights and Services Act*". Mr. Richter alleges that he did not receive that correspondence in December, 1996, despite (as noted above) having provided Victim's Services with a change of address. In his testimony, he maintained that he did not receive that December 3rd correspondence until June 11, 1997, and in support of that allegation, he provided Exhibit 6, a letter from himself to Victims' Services, dated June 20, 1997. He states in that correspondence, "After I spoke to you on the telephone, you were kind enough to forward it to my address in Hamilton, Ontario. (The December 3, 1996 letter is addressed to a Dartmouth address)

Exhibit 4 (the letter to Mr. Duncan) goes on to note that "Subsequently, Mr. Richter submitted a copy of the warrant for arrest for...(his wife)..Upon review, Mr. Richter was again denied compensation as the information we had received to that point indicated that ...(his wife)... had custody of their child. Mr. Richter was notified of the denial in a letter dated July 22, 1997."

It appears that Mr. Richter provided a copy of the warrant by fax of July 5, 1997.

Mr. Richter says that even when he did receive a copy of the December 3, 1996, letter denying compensation (Exhibit 5), he still was not aware of the alleged misrepresentation by the Police Department. He testified that when he applied for compensation, he assumed that the Police Department would simply have sent a copy of his entire file, which he assumes would have included the information that the custody order had been varied, and that a warrant had been issued. He says that he was not aware that Victims' Services had misunderstood the situation until he received theirs of July 22, 1997 (Exhibit 2). That correspondence, according to Mr. Richter, showed him for the first time that Victims' Services had been misinformed. In particular, that correspondence noted:

"The police information which we have received indicates that your wife had been awarded custody of your daughter by the Family Court for the Province of Nova Scotia."

Exhibit 4, the correspondence from Victims' Services to Patrick Duncan, notes that *"..there was no verbal communication between our office and the Halifax Regional Police, and ... (the incident report) ... represents the only documentation received from the Halifax Regional Police Service on this matter."* In response, on July 26, 1997, Mr. Richter apparently provided Victims' Services with a copy of the Ex Parte Variation Order (issued on July 5, 1996), and on October 10, 1997, he was advised by Victim's Services that he could be considered as a victim of crime, and therefore eligible to receive compensation.

As of the date of the hearing, Mr. Richter did not seem to be aware of his eligibility, and had taken no further steps in that process.

As was noted above, there are two allegations contained in this complaint. As well, as is noted above, on the face of form 5, the complaints appear to be in time. However, it can be seen on the above review of the facts, most, if not all, of the interaction between the officers and Mr. Richter took place from April 1996 to August or September of 1996; the provision of the "false" information occurred in October and early November of 1996.

The applicable time requirements with respect to the filing of complaints are set out in Regulations 7 and 8. Regulation 7 requires that a complaint be made within 30 days of the "occurrence which gave rise to the complaint". Regulation 8 permits an extension by the Board, with the provisos that: a) the complaint be filed within 6 months of the occurrence; b) an application for

extension is made within 6 months of the incident; c) the Board is satisfied that there are reasonable grounds for ordering the complaint be proceeded with, and d) proceeding with the complaint will not unduly prejudice the member.

The allegations will be dealt with separately.

1. Provision of false information

The information provided to Victim Services by Sgt. Chatterton is date stamped November 6, 1996. This would make the latest date for filing a complaint, and applying for an extension, June 6, 1997. Leaving aside any other consideration, the complaint would be out of time. Mr. Richter argues, however, that he was not aware of the alleged false nature of the information until he received the July 22 correspondence from Victim Services, which brought home to him the erroneous perception of Victim Services that his ex-wife had custody of the child. This raises the question of the applicability of the so-called "discoverability rule" to these proceedings. In essence, the rule 'starts the limitation clock', not when an event occurred, but rather, when the party knew, or with reasonable diligence, should have known, that the event occurred.

The rule is not an equitable concept, but rather a principle of statutory interpretation. The leading Canadian authority pronouncing the rule is **Nielsen v. Kamloops** (1984) N.R. 1 (S.C.C.). In that case the limitation was contained in the **Municipal Act**, and the **Limitation Act**.

Both pieces of legislation provided that the limitation set out commenced "at the time the cause of action arose". It was therefore open to the Court to determine when the cause of action 'arose', and Wilson J. held that this was not at the point of the alleged misconduct, but rather at such time as the plaintiff actually discovered, or should with reasonable diligence, have discovered the damage.

Regulation 7 made pursuant to the **Police Act** R.S.N.S. c.348, as amended, permits a member of the public to make a complaint "...within 30 days after **the occurrence which gave rise to the complaint..**"; regulation 8, dealing with extensions, uses identical language. This language is much narrower than that discussed in **Kamloops** ("...when the cause of action arose..."). To interpret the language of the Nova Scotia regulation, as intending that the "occurrence which gave rise to the complaint" is the point at which the complainant **actually** became aware of the alleged breach by the officer, would result in a far more unrestricted limitation period than in **Kamloops**. It would require the Board to disregard the point at which the complainant **should** have known about the conduct.

Can "occurrence" therefore somehow be interpreted as meaning the point at which the complainant, with due diligence, **should** have known about the conduct? In the view of the Board, the statute simply cannot bear such an interpretation. 'Occurrence' implies an actual, not a hypothetical event. The Board must have regard to the "literal" or "plain meaning" rule in the interpretation, as expressed in **Sussex Peerage** (1844) 8 E.R. 1034:

"...if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense."

It is the view of the Board that an amendment of the regulations would be required to incorporate the discoverability rule.

The non-applicability of the 'discoverability rule' certainly gives rise to the concern expressed by Wilson, J. in **Kamloops**, ("...the injustice of a law which statute-bars a claim before the plaintiff is even aware of it's existence"). However, that concern is less severe in the context of an administrative disciplinary tribunal. The power of this Board is essentially limited to sanctions effecting the member; it cannot provide a remedy *per se* to the member of the public, except to the extent that it may impact on police practice. In cases where the conduct of the officer or the department has had particular consequences for the individual complainant, there would usually be recourse to other forums, for example an action in tort to recover a personal remedy, or criminal proceedings against an officer in more serious cases.

In cases where police practice as a whole should be altered, there are other avenues in the Police Act, aside from the complaints process, to inquire into particular practices.

The Board therefore finds that the 'occurrence' giving rise to the complaint of providing false or misleading information, took place on November 6, 1996, at the latest. The application to extend was made no earlier than July 22, 1997, and is well beyond the 6 month limitation provided by the regulations. There can be no extension granted with respect to that complaint.

2. Failure to investigate

There is limited information before the Board with respect to the investigation. It appears that Mr. Richter's initial contact with the Halifax Regional Police took place in April, 1996, with some further correspondence and discussions in August and September, 1996. In his direct evidence, Mr. Richter described at least two meetings with Sgts. Chatterton and MacLellan in August and September, and "numerous letters on an ongoing basis" until he moved to Ontario. In cross-examination, he agreed that at that time (1996) he felt that the investigation was inadequate, and that he met with the officers with regards to that issue.

He testified that when he moved to Hamilton, because of his health he was "no longer able to pursue the matter". In cross-examination, he said that he may have had telephone contact during that time. He returned to Nova Scotia in July 1997.

As was noted above, he at some point through his own investigations obtained information, and he expressed concerns about the failure of Halifax Regional Police to explore that information, for example by questioning the cleric. The Board has no evidence before it as to when that information was provided to police. The Board also has no evidence as to when (or if) the department, Sgt. Chatterton, or Sgt. MacLellan told Mr. Richter that the investigation was at an end.

Mr. Richter argues that the duty to investigate is ongoing, thereby leaving open the right to file a complaint at virtually any time. The Board does not accept that argument. In any investigation, there must be a point where it becomes apparent, by either express conduct or by implication, that the investigation is at an end. Even in a case where a file might be re-activated at some future date, for the purposes of the complaints process, it is that initial closing of the file that triggers the limitation period. It would be unfair, and not in keeping with the purpose of the complaints process, to virtually eliminate the limitation period created by statute.

However, in this case, without any evidence from which it may ascertain, or at least infer, that the investigation was closed, the Board is unable to determine the date of the "occurrence" from which the limitation period commences to run. The Board is most concerned with the date of provision of the additional information discovered by Mr. Richter. It may well be that this was provided to the department in August and September of 1996, but it may also have been provided upon Mr. Richter's return to the Province in 1997. The Board is unable to determine the point at which Mr. Richter should have understood that the investigation was at an end. The burden is on the

party relying on the limitation period to establish that point, on the balance of probabilities. That has not been established in this case, and therefore the Board finds that Mr. Richter's complaint, with respect to the failure to investigate, is allowed to proceed without extension.

DATED at Halifax, Nova Scotia this day of April, 1998.

JEAN MCKENNA
Alternate Chair

LINDA FRASER
Member

BRAD BARTON
Member

Distribution:

Mr. Joachim H. Richter - Complainant
Mr. Patrick Duncan - Solicitor for the named officer
Chief Vincent MacDonald
Brad Barton - Member
Jean McKenna - Alternative Chairman
Theresa Meuse - Member
Sergeant Chatterton - Halifax Regional Police Service
FYI - Secretary, Local Board of Police Commissioners
Mr. Bob Barrs - Executive Director, Policing Services

NSPRB-97-0131

IN THE MATTER OF:

The Police Act, R.S.N.S. 1989,
Chapter 348 and the Regulations made
pursuant thereto

AND IN THE MATTER OF:

A request, filed by **JOACHIM H.
RIGHTER**, Complainant, for an
extension in time to file a complaint
a g a i n s t **S E R G E A N T
CHATTERTON** of Halifax Regional
Police Service.

D E C I S I O N

Before:

Jean McKenna - Alternate Chair
Linda Fraser - Member
Brad Barton - Member