

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 Notice of Review, in Form 13, filed by **RANDALL WALTER MOORE**, Complainant, against **CONSTABLE BLAIR HUSSEY** and **CONSTABLE GORDON GRAHAM** initiating a review before the Nova Scotia Police Commission of a decision of D/Chief Frank Binns.

BEFORE: Jean McKenna - Alternate Chair
Theresa Meuse - Member
Linda Fraser - Member

COUNSEL: Mr. Patrick Duncan - Solicitor on behalf of Constable Blair Hussey and Constable Gordon Graham
Mr. William Leahey, Solicitor on behalf of Randall Moore, (In part) and Mr. Randall Moore representing himself.

HEARING DATE: April 27, 1998, April 29, 1998 & May 5, 1998, and February 23 & 24, 2000

PLACE Hearing Room of the Utility & Review Board, 1601 Lower Water Street, Suite 300, Halifax, Nova Scotia

DECISION DATE: Short Form - February 24, 2000
Long Form - May , 2000

DECISION: Complaint Dismissed

This is a review of the complaint of Randall Moore, against Cst. Blair Hussey and Cst. Gordon Graham of Halifax Regional Police. Mr. Moore alleges that the officers acted in a manner contrary to Regulations 5(1)(a)(ii) and (v), and (h)(iii):

- 5 (1) A member of a police force commits a disciplinary default where the member
- (a) engages in discreditable conduct by
 - (ii) contravening an Act of the Province of Nova Scotia, a province or territory of Canada or the Government of Canada or a regulation made pursuant thereto, where the contravention is of such character that it would be prejudicial to discipline or likely to bring discredit on the reputation of the police force,
 - ...
 - (v) being discourteous or uncivil to any member of the public having regard to all the circumstances,
 - ...
 - (h) improperly uses a firearm or aerosol irritant by
 - (iii) failing to exercise discretion and restraint in the use or care of a firearm or aerosol irritant;

The events giving rise to the complaint took place on the evening of July 6, and the early morning of July 8, 1997. At that time, Csts. Hussey and Graham were looking to arrest a "Robin Marsman" in relation to an assault on a Bernadette Bowden, as well as on several outstanding warrants.

The complainant, Mr. Randall Moore, is the owner of a four unit building located at 2390 - 2392 Creighton Street in Halifax. The building has two apartment units on the street level, and two on the second. The premises are accessed by a single front entryway, with an inner and outer door,

and a small enclosed porch between the doors. There is further access at the side of the building towards the rear, by way of a set of stairs leading down from a doorway on the second floor - a fire escape. There is a common hallway on both levels, and an interior flight of stairs between levels joining the hallways.

The street-side ground floor unit was occupied by a Mr. Joseph Gray; the rear unit was rented to an organization called A.L.M.A. (Africville Liberation Movement Association). Apparently, the seven board members have keys. The evidence suggests that the unit is used principally for card games. The street side second floor unit was occupied by Mr. Moore. One side of the unit fronts on Creighton Street, and the other on Gerrish. The other second floor unit was occupied by Mr. Moore's brother, Kenneth.

According to Cst. Cedric Upshaw, at some time prior to the incident that is the subject matter of this review, Mr. Moore came to the Community police satellite office on Gottingen Street, and suggested that he leave a set of keys there to allow police ready access to the common areas of his building. He was apparently concerned about drug activity, having had some problems with a previous tenant. The keys were accepted, and placed on a bulletin board in the office.

According to Mr. Moore, between 11:00 and 12:00 p.m. on July 6, he was in bed in his apartment with a friend, Mr. Jeremy Savoie. (Mr. Moore said that he is "gay", and that his sexual preference was known to Csts. Hussey and Graham at the time of the incidents.) Mr. Moore said that his brother knocked on his bedroom door, to tell him that there were two police officers downstairs wanting to get in. He said that he looked out the window and didn't see anyone, and so he turned on a video monitor which he said covered the front entryway. He saw Csts. Hussey and Graham, and said that he heard Hussey say "I don't care if he's in there or not, I don't like this little faggot anyway". Moore said that he went down to the door, and asked the officers what they wanted, and in reply, Hussey asked him how many people were in his apartment. He replied "three", and asked them to wait at the entry until he got dressed.

According to Moore, the officers followed him upstairs, and he again asked them to wait at his door. However, they continued into his unit through the open door, into the kitchen area. The kitchen is immediately inside the door to the unit. His evidence was that he then said "I asked you to remain outside", and at this point, he was told that they were looking for one "Robin States". He says that he told them that he didn't know Robin States, whereupon Hussey replied "Don't give me that bullshit, you were playing cards with him all day". Moore testified that he knew a "Robin Marsman".

At this point, Mr. Moore's brother was in the living room area, immediately adjacent to the small kitchen area. According to Moore, Jeremy Savoie was in bed in the bedroom, with the door closed. Hussey asked him to describe the third person in the unit, and said that they would like to see him. Moore refused, claiming that Savoie was in the military, and would get in serious trouble if the forces found out about homosexual activity on his part. Moore also asked if the officers had a warrant, and Hussey replied, "Don't you f... with me, I run this neighbourhood". At this point, Moore says that he asked the officers to leave. Hussey replied that if Moore didn't let them go through the apartment, he would be charged.

Moore said that at this point, Hussey asked where Moore's dog was. (according to Moore, it was lying quietly in the living room). He testified that Hussey asked him to put the dog, a doberman, in the other room. Moore asked why, and Hussey replied "Put him in the f...ing room or I'll shoot the f...ing dog", and simultaneously he drew his gun.

Moore then called the dog to his side, speaking in french. He said to Hussey "Now shoot him". Hussey then reholstered his gun. Moore testified that the only time the dog barked was when he turned on the monitor, before the officers entered the building.

During this exchange, Moore said that he called to his brother, who was in the living room looking out the window, "turn around, I want you to witness this."

Moore then started to ask them to leave, in french, and Graham said "We don't understand. You're telling us that we can go through?" He said that one of the officers commented that "We're not on Young Avenue so we can do this". Both officers then left, with Mr. Moore escorting them downstairs. According to Moore, this encounter lasted approximately 35-40 minutes, and that he asked them to leave many times throughout that period. He also maintained that at no time was he shown a warrant.

Moore then went back up to bed. He said his brother Ken was still in the living room. About 20 minutes later, his downstairs tenant, Joseph Gray, knocked at the door of his unit, reporting that the police again were downstairs and wanted to come in. In the meantime, Mr. Gray's son had apparently let them in, and Sgt. Sullivan came to the apartment door, with Hussey standing slightly behind him, holding a can of mace or pepper spray. Moore said that he asked Sullivan if he had a warrant, Sullivan said no, and Moore closed the door. Sullivan continued to knock, and Moore opened the door again. Moore said that he then agreed to let Sullivan come in, alone, but "not with the person who pointed a gun at the dog". Sullivan wasn't going to come in alone, and so Moore closed the door, telling them to come back when they had 'papers'.

He also said that in the course of this discussion with Sullivan, Cst. Hussey unbolted the fire escape door to the landing where two other officers were standing, one with a rifle or shotgun.

He said that he escorted the officers to the ground level entry, and then told the officers on the fire escape to get off the property. He said that when he looked out his Creighton and Gerrish windows, he could see approximately 10 officers.

Moore said that just before Sullivan came to the door, he heard Cst. Graham calling from the street, saying that he didn't believe that Moore owned the building. He claims that Graham also said that "You had no problem letting us in when you were ratted on these people". Moore said that the latter comment concerned him, as it left the impression with some of his neighbours (who were at their windows) that he may have "ratted" on them in the past.

In cross, Moore acknowledged that he had called his friend Kenneth Cassidy to come over after the second visit by the police. He said that he called him to go out and get cigarettes; he didn't want to leave the apartment in the circumstances. He said that Cassidy took his vehicle and purchased cigarettes.

According to Moore, he telephoned the Department to make a complaint the next morning, but got Sgt. Downey's voice mail. He then reported his complaint on July 8, 1997. An officer was sent over to take a statement, and he said that he was advised that someone else would take a more detailed statement at a later date.

On July 12, he was arrested for obstruction of justice by Cst. Graham, taken out of his building in handcuffs, and waited on the street without any shoes, approximately 10 minutes for the arrival of transport. He said that while he was at the department, he encountered Cst. Graham in a stairwell, and Graham commented "people like you make me sick". It was Mr. Moore's contention that the arrest and charge were retaliation for the complaint.

In cross-examination Mr. Moore confirmed that he knew a "Robin"; that Robin had been visiting another unit in the building on another occasion, (apparently the "ALMA" unit), and came upstairs to use Mr. Moore's phone, indicating that "Dunk" (Kenneth Cassidy) had sent him up.

He was directed to Exhibit 1, the statement of Marsman, taken by Cst. P. Astaphan on July 11, at 2145 hours. In that statement, Marsman says that he was in fact in Moore's apartment on the evening in question. As well, Marsman in that statement shows his occupation as "R & M Trucking (a business apparently owned by Moore). Moore's response was that Marsman probably got one of his business cards from ALMA.

He was asked about the similarity between observations made in the Marsman statement, and events of the night. For example, in his statement, Marsman refers to the speaking of french, and a comment about shooting the dog. Marsman also said in his statement that he was watching a movie

that night with "Randall, Kenny, and Doug". Moore denied that Marsman was there, and said that he didn't even know a "Doug". Moore said that he believed Marsman had been coached with respect to his statement, and that the whole thing was a fabrication.

In cross, Moore also denied that the officers had told him on the night of the incident, about the outstanding charges against Marsman, and he denied that he was told that he could be charged with obstruction if he failed to let the officers search. (Although he testified on direct that he was told that he would be charged if he didn't let the officers search.)

He also denied knowing Ms. Bowden prior to the incident, and said that he didn't speak to her on that Sunday about Marsman coming over for a card game. He said the only time that he spoke to her was after the incident, when she told him that she didn't have to testify against Marsman on the issue of her assault, that the matter was not going ahead, and that the police had agreed to "slip him a couple of charges" in return for a statement against Moore.

Bernadette Bowden, the alleged victim of the assault by Marsman, testified. She knew Marsman/States as "Marsman". She confirmed that she was contacted by telephone, by Cst. Graham on a Sunday evening in July; Graham wanted to know where Marsman was. She told him that he might be at a property where he played cards with Kenneth (Dunk) Cassidy. She didn't know the address, but was able to describe the location of the Moore house. She did not specify any particular unit in the building.

She said that she had met Moore on two occasions, when she was at the house; she said that he occasionally dropped into the ALMA room where the cards were being played.

She testified that she had dropped the charges against Marsman of her own volition; she thought that Marsman would change, and that she went to prosecutor Ann Calder and said that she had lied about the assault.

She also testified that she did not know Cst. Astephan, and the first time that she met him was while they were both waiting outside the Board hearing to testify.

In cross, she confirmed the severe nature of the assault against her as described in her statement (punched, threatened with a golf club, hit with a stick, slapped, death threats, etc) She confirmed that when Cst. Graham called her, he seemed familiar with the nature of the assault, and she recalled that he used the name "Marsman".

She said that she spoke to Cassidy and Moore a few weeks after the incident, but that she had no discussion with them about any "deals" to drop the Marsman charges.

She agreed on redirect that Marsman had told her that "the police needed him now".

Robin Marsman States testified. He said that he preferred the surname "Marsman". He said that he met Moore when he (Marsman) was playing cards at Cassidy's (ALMA), but that Moore himself did not play cards. He said that he had been in Moore's apartment a number of times, while waiting for card players, drinking beer, and watching tv.

He acknowledged that there were three outstanding warrants for his arrest at the time. He said that on the evening in question, he was in Moore's apartment. He and Ken Moore were watching tv, and Randall Moore was in bed. He said that when the police came up, he hid in the bedroom, although the bedroom door was left open. He overheard a discussion about warrants, a comment about shooting the dog, and Randall Moore speaking in french. He estimated that the initial visit by police lasted from 8-15 minutes. He said that when the police left, he went back into the living room, and that it wasn't long before they returned, perhaps half an hour, at which point he returned to the bedroom. After police left the second time, he went to Ken Moore's apartment and stayed there until approximately 5:00 a.m. Later in direct, he said that he left around lunchtime. In his statement, he said that he left "when the police left".

He described being arrested several days later; he said that he told the officers that while they were searching for him at Moore's, he was out driving around watching them. He said he did not encounter either Cst. Graham or Cst. Hussey at the time he was arrested.

In cross examination by Mr. Duncan, he said that Moore did not know his surname , but knew his father, Barry States. He also said that the dog barked while the police were in the apartment (contrary to the earlier testimony of Moore).

He said that with respect to the charges with outstanding warrants, those charges were not dropped, and that he was sentenced to perform community work and restitution.

Kenneth Moore, Mr. Moore's brother, testified. He essentially confirmed Randall Moore's evidence as to the arrival of the police. He said that he could not see if there was anyone in the bedroom during his brother's conversation with the police. He said that while the officers were in the apartment the first time, the dog did get up and come into view, at which point one officer said to put the dog in the bedroom or he would shoot it. He said that the dog did not bark while the officers were in the apartment. He described one officer drawing his gun, with his left hand, and saying "put the dog away or I'll shoot it".

He said that one officer asked him if he lived there, and said that he let the police into his own apartment on the second visit. He also said that in the course of the second visit, his brother told him to lock the gate to the street, on the laneway adjacent to the house, but that a police officer told him to leave it open. He locked it anyway. Although he saw 8-10 police officers, he didn't see anyone with a rifle.

He also described going with Cassidy to get cigarettes for his brother.

In cross by Mr. Duncan, he agreed that the dog normally barks at the sound of a doorbell or a knock on the door. He agreed that he and Randall Moore had known Barry States, Mr.

"Marsman's" father, since their school days. However, he said that he only knew Robin as "Robin". He says that he had never heard the name "Robin Marsman".(in contrast to his brother's evidence, who only knew 'Robin Marsman'.)

He said that he didn't even know what Robin States looked like before this incident; he saw several individuals at the card game earlier that day, and seemed to believe that one of them could have been Marsman.

He recalled that on the second attendance by the police that evening, his brother went downstairs to let them in.

He recalled hearing the police mention a "warrant for the arrest of Robin", and that charges could be laid for "aiding and abetting".

He said that after the police left, his brother put a french music tape on, "very loud".

He gave no evidence as to the presence or absence of anyone in the bedroom, be it Savoie, Marsman, or anyone else.

Tenant Joseph Gray testified. His evidence was that he heard a noise; he heard officers asking to come in to the building; he went up to Randall Moore's apartment to see what was going on (he didn't say how it was he determined the activity involved Randall Moore's apartment); on his way up he passed two officers coming down; he went into Moore's and saw only Kennneth Moore and Randall Moore. He returned to his own unit. He said that he looked out his window, and saw a Jeep and a paddy wagon. There were several officers in the area.

He didn't know if his son let anyone into the building. However, his son Joseph Murphy testified that he heard a noise on the street. He looked out and saw a police officer who asked him to let him into the building. He said he then let two officers in; one went upstairs and one stayed

down. Later, he said he was not sure how many went up and how many down. He said that there is a video monitor in the entry, but he believes that it was installed after the incident.

Joseph Murphy described other officers present outside when he became involved, and it therefore appears that he became aware of events at the time of the second visit.

He said that he knows "Robin States".

Joseph Gray testified that he didn't hear a dog bark, and his son said that he didn't hear a dog bark.

George Moore, Randall Moore's brother also testified. He arrived after the first visit by police, and was in Moore's apartment at the second visit. He confirmed that there were a number of officers outside the building, and he saw a couple of officers inside at some point. His evidence was vague.

He does not recall if the dog barked or not; he said that it would sometimes bark when people came to the door. He said that the dog was "kind of scattered - not too bright".

He said that after things settled down, Randall Moore spent the rest of the night sleeping on the couch.

He also said that he had given the video monitor to his brother, a short time before the incident.

Kenneth Cassidy testified. He has known Moore for 20 years, and lives a block away. He has known States / Marsman since he was a child.

On the evening in question, he was at his girlfriends house on Gerrish, about half a block from Moore's. He said that he received a call from Randall Moore around 2:20 or 2:25; Moore was in a panic; the police were there, they were looking for someone called "Marsman", and there was no one there by that name.

When he arrived, there were a number of police officers in the area. He let himself in to the building, and proceeded to Moore's apartment. Kenneth and Randall Moore were there, and the bedroom door was closed. Randall Moore related to him that an officer had pulled a gun, and threatened to shoot the dog.

He said that "Marsman" would have no reason to hide from him; that he had seen him occasionally, and that he attended a couple of card games. He acknowledged in cross examination that he recognized the name "Robin Marsman". He said that after 10 or 15 minutes, he went out and got cigarettes for Moore. He then left with George Moore.

Cst. Perry Astephan was called on behalf of Csts. Graham and Hussey. He has served with the (now) Halifax Regional Police since 1991 and he is familiar with Robin Marsman, who he also knows as "States", through his work as foot patrol in Charlie Zone. On July 9, 1997, he was on duty, and had read a report at the department that Marsman was arrestable for several offenses. That evening, he, Sgt. Shane Halliday, and possibly a Cst. Boutlier, went to Marsman's address, 2544 Brunswick Street. Marsman was arrested without incident.

He said that after the formalities of the arrest were complete, he asked Marsman what had happened at Randall Moore's place. (he had a discussion with Sgt. Downey, and was aware of the complaints). Marsman told him that he had been in Moore's apartment, that he had heard the discussions, and the dog barking, etc. He told Astephan that after the police left, he left. Astephan reported this to Sgt. Downey, (who was dealing with the investigation of the complaint) who asked him to try to get a statement from Marsman. On July 11 he took the statement which was then provided to Sgt. Downey.

In cross examination, he said that he did not discuss the matter with Graham or Hussey before he took the statement.

Cst. Gordon Graham testified. He has been with the Halifax Regional Police, and its predecessor for seven and a half years. He came on duty on July 6, 1997 at 6:00 p.m., and was scheduled to continue until 6:00 a.m. July 7. He was assigned to investigate the Bowden assault. He reviewed Ms. Bowden's statement, and discussed the matter with Cst. Mason, the investigating officer. He viewed the assault as being fairly serious. He was investigating another assault that evening, and took the victim of that assault out in a vehicle through the area to see if they could locate the suspect. He then stopped at Marsman's address to arrest him, but was informed by his brother that he was out.

He returned to the department and called Bowden to get information as to where Marsman might be located. She mentioned Moore's building, saying he played cards there regularly, and she said that he also spent time at Cassidy's. She informed Graham that he was known as Marsman and States.

Graham said that he assumed the card game at Moore's would be upstairs; he frequently went by the building on patrol when the door was open, and had never noticed a card game in progress on the ground floor. He also said that he knew Randall Moore, and had not had any problems with him in the past.

He said that at 1:20 a.m., he and Cst. Hussey proceeded to Moore's building. He said that Hussey went to the front door, and he went to the rear fire escape entrance which was unlocked. He entered, then came down and let Hussey in.

He said that they knocked on Moore's door, and he let them in. The dog was running around, and Kenneth Moore, who was also in the apartment, took the dog into the living room. He said that they asked if Robin Marsman was there; Moore said he didn't know him. They then asked if he knew

"Marsman / States". Moore replied that he had been there the day before, but wasn't there then. Moore wanted to know why they were looking for him, and was informed that there was an outstanding warrant. Moore replied that he wasn't there; that in addition to Kenneth Moore, the only other person present was his male lover, who was in the bedroom. He said it was none of their business who his lover was, and said that they could not go through; that his lover was in the military, and that there could be problems.

Graham said that they told him they had nothing to do with the military, but Moore continued to refuse access, asking if they had a warrant, and maintaining that they would not be allowed entry without a warrant. He said that Moore became upset, which struck Graham as odd. He said that Moore also started speaking french.

He said that the dog seemed upset or confused, and that Moore called the dog to his feet. He said that Hussey said something to him about controlling the dog. He said that at no time were there any weapons in hand.

He said that throughout, Moore did not tell them to leave, he just told them that they couldn't come in. He said that he continued to try to persuade Moore to let them in; that he wanted to arrest the suspect as he was concerned about Bowden's safety.

He said that they finally decided to leave when it became clear that Moore would not be persuaded; they had been there approximately 8 minutes. They then drove the police vehicle around the block and parked it out of sight. At approximately 1:30 p.m., they entered 5537 Creighton, across Gerrish from Moore's place, and went to an apartment on the second floor, where a resident agreed to allow them in to maintain observation through the windows of Moore's apartment. He said that they could see through the living room into the kitchen. Exhibit 12 was a photo taken from the vantage point, taken at the time of the hearing.

He said that they observed a black male, although they could not see his face. They agreed that Hussey should go down to the street, in case it was Marsman, and he tried to leave. Graham said that he subsequently identified this individual as Marsman, and radioed the information to Hussey. At this point, they called Csts. Boone and Longley to cover the back. They then contacted Sgt. Sullivan to attend, to ensure the matter was appropriately handled. They were aware of the Supreme Court of Canada decision in **R. v. Feeney**, and were concerned about the legalities of entry.

When Sullivan arrived, he and Hussey went upstairs again, and Graham stayed at the observation point. At this point, he observed Marsman crawl across the floor out of sight, from right to left. A short time later, Sullivan and Hussey came out. Hussey went to the department to call the duty crown attorney, to obtain advice on "Feeney warrants". Graham, Boone, and another officer maintained observation.

Hussey returned approximately 1/2 an hour later, advising that, according to advice from the Crown that they had the right to enter. However, Sullivan vetoed any further attempt to enter that night; apparently there was concern that if they went in they very well might have to shoot the dog, which would create a risk to others in the building.

He said that while they were there waiting for Hussey to return, he saw Cassidy enter the building.

They cleared the area at 3:15 p.m., and proceeded to the Department on Gottingen Street. Graham was to relieve the booking officer, and he said that Hussey apparently began to prepare the crown sheet in relation to obstruction and threat charges against Moore. Graham completed the file on Marsman as far as he could; in the section relating to bail, he recommended remand, as opposed to release. He placed the "white file " in the file room, and before he went off duty at 6:00 a.m., he completed either a general 'mailbox' (e-mail), or a mailbox to Cst. Astephan. He then was off duty for four days. When he returned to duty, Cst. Calder was his partner. It was then that he heard about

the complaint filed by Moore. In cross, he said that he was not sure when he heard about the complaint.

He said that he was present in court the day the charges against Marsman were dropped. He was not pleased that this occurred without consultation with the police, and said that he emphasized this point to the Crown.

In cross examination, he said that he believed the "ALMA" unit was vacant; that the only tenant on the ground floor was Gray, and that Moore and his brother lived upstairs. He said that Gray often left the street door open, and he had never seen cards being played in that unit. By process of elimination, he apparently assumed that Moore's apartment would be the one where Marsman was known to play cards.

He agreed that Moore was not initially unco-operative. He did not think that Moore instructed them to leave. However, he said that he understood that if a homeowner wanted them to leave, they should, and he acknowledged that it was clear from Moore's body language that he wanted them to leave.

He said that his concern with the dog was that it was excited, and began to bark. It barked until Ken Moore took it into the living room. He hoped it wouldn't attack.

Sgt Michael Sullivan testified. He arrived on the scene at approximately 2:00 p.m. Cst. Hussey advised him that Marsman had been observed in an apartment on the top floor of the building. Hussey also explained that he and Graham had previously been denied entrance. It was decided that he and Hussey would make a further attempt to talk Moore into voluntarily letting them in. Hussey warned him about the dog.

He said that a resident of a ground floor unit let them into the building. When he knocked on Moore's door, there was initially no response. Moore then came to the door. Sullivan says that

he explained that they had warrants for the arrest of Marsman. He said that once again, access was denied. He also said that Moore was alternating between calm and upset. He was lucid, and then screaming in french. At one point he raised his fist at Hussey, and said that if he pulled his gun on his dog he'd punch him in the mouth. Moore ordered them off the premises, and they complied.

Sullivan said that neither of them had any weapon, including mace, in their hands at any time. He said that they were standing side by side in the hallway, and Cst. Boone was behind them, wearing the bicycle patrol uniform. He also said there were no rifles at the scene, and that in order to obtain rifles, it would be necessary to put a request to the watch commander who would then call the emergency response team. He would have had access to two shotguns, which at the time were located in the back of the supervisor's vehicle in Spryfield.

He said that the dog was barking continuously, but was not an issue.

According to Sullivan, Moore did not offer to let him search without Hussey; and in any event he wouldn't go in alone. However, had the offer been made, he could have made arrangements for another officer to accompany him.

He said that after Hussey informed him of the crown's advice on entry, he decided in any event that they wouldn't go in without Moore's consent. He was concerned about officer safety; he felt that if forced entry was made, it might be necessary to shoot the dog, creating potential danger for other tenants. In addition, he described Moore's behaviour as bizarre, and he felt they no doubt would have had to arrest him as well.

Constable Boone was on bike patrol that evening. He testified that Hussey requested that he attend to cover the back entry. He ultimately went up the rear fire escape. Cst. Longley was also on the fire escape. Through the door he could observe Hussey and Sullivan in conversation with Moore. He did not see a weapon of any sort. In cross examination he acknowledged that he couldn't see Hussey's hands.

Cst. Longley testified. He was also on bike patrol that evening, and like Boone, was called to assist, by covering the back door. He proceeded up the fire escape, and into the building. He was unsure as to whether the door was already open, or if someone opened it for him. He recalled that Hussey originally asked for Marsman, and Moore responded that he was not there. Moore was on edge, angry and agitated. He didn't specifically recall a threat by Moore. After Sullivan and Hussey left, Moore told he and Boone to "get the f... off my property". He then took up his original position outside, and subsequently left the area without further incident.

Cst. Blair Hussey testified that he was working with Cst. Graham that evening. At some point it came to his attention that Robin Marsman was arrestable; he was not sure of the source of the information. He was aware of Bowden's statement, and also aware that there were outstanding warrant for Marsman, although he hadn't seen them. He knew of Marsman, and knew of his brother, who went by Marsman - States.

He recalled going to Marsman's residence that night with Graham, and being advised by Marsman's brother that he hadn't been around all day.

He recalled that Bowden had advised them that Marsman hung out in an apartment in Ahern Manor, and that he played cards at Randall Moore's. (he believes that she described the building). He knew Moore's building, as they had a number of calls there with respect to a previous tenant, Wayne Johnson. On one occasion Moore had been assaulted, possibly by Johnson, and they attended to take a statement from Moore in his apartment. Up until the incident which is the subject of this hearing, they had no problems with Mr. Moore.

He said that when they went to the building on this occasion, they didn't take the key that was in the community office; he felt that Moore would let them in. In cross examination, he said that he chose to approach Moore's unit as there was no light on in the downstairs unit. He said that Moore came to the apartment door, and started walking toward the living room. The dog was barking. They followed him in as far as the end of the kitchen. He told Moore that he was looking

for Robin Marsman who had several outstanding warrants, and Moore replied that he didn't know Marsman. Graham said that he heard that Marsman played cards there, and Moore repeated that he didn't know him. Hussey suggested Marsman / States, and Moore said that he had been there "yesterday".

They then asked him who was in the bedroom, and he replied "My lover". Moore was not prepared to let them look around. The discussion went back and forth, and Moore was warned that if he was hiding Marsman, he could be charged with obstruction. He said that Moore was very agitated.

At one point, Moore locked the door. Hussey unlocked it , Moore locked it again.

He said that the dog began getting worked up, and he told Ken Moore to "get hold of" the dog, at which point Randall Moore called the dog to his side. Hussey told Moore that "if the dog comes at us, he could be shot - get control of the dog". In cross examination, he said that the dog was pacing in the living room, and he asked Ken Moore to put the dog in the bathroom.

He said when he initially went to the property, he assumed there would be no problem, they had arrested people there in the past uneventfully. However, Moore's agitation caused him to become suspicious. He said that he had no knowledge about Moore's sexual orientation, and therefore he thought the comment about the 'lover' was intended to throw them off. In his experience, demeanour is an indicator of whether a person is hiding someone. He said that given that Bowden said that Marsman played cards there, that Marsman was well known in the neighbourhood, and that Moore was well known, coupled with Moore's denial that he even knew Marsman, further aroused his suspicions. When Moore said that he knew States, he seemed to be 'backpeddling'.

He denied that he used the word f...ing at any point in the discussion, and he denied that he drew his gun. He said that there was reason NOT to, as Cst. Graham was in front of him, and as well, there was nothing to make him think he needed to use lethal force.

He said that they left after a few minutes.

His description of the observations made from the adjacent residence is similar to the event as described by Graham. He said that after he left the adjacent premises, he went to the van, from where he observed the front entry. It was there that he received the message from Graham that Marsman was definitely in the building, and so he contacted Sgt. Sullivan. He thought that Sullivan might be able to diffuse the situation.

When he attended the premises with Sullivan, the downstairs tenant let him in. When they proceeded to the second floor, he opened the fire door to permit access to Csts. Boone and Longley, who were on the fire escape. He did not have a clear recollection as to the latch mechanism.

When Moore came to the door, he was apparently still agitated; he said that they were not coming in without a warrant, and said that "If that guy shoots my dog I'll smash his face in". Hussey said at this point he wanted to arrest Moore for uttering threats, but did not do so.

He and Sullivan returned to the street when they failed to obtain co-operation from Moore. He then went to call Crown Attorney Alana Murphy, who he says advised him on the telephone that a warrant was not necessary; that they could go in and arrest Marsman, and that the worse case result would be that any statement taken might not be admissible. At this point, he passed the information on to Sgt. Sullivan who had just arrived at the department. Sullivan determined that they should abandon any further attempts to enter that evening, as given the presence of the dog and the state of agitation of Moore, shooting might occur.

He said he then returned to the scene and advised all officers to clear. He then returned with Hussey to the department. They decided to charge Moore with obstruction, and he began to prepare the Crown Sheet, intending to complete it on his next shift, which began on July 11. He said that he may have had contact with Cst. Astephan before he returned to duty; Astephan arrested Moore on July 9. He said that he was not aware of the Police Act complaint until he returned to duty.

He said that he did not have any contact at all with Marsman throughout the matter, and he was not consulted or involved with Marsman's charges being dropped.

When questioned by his counsel, he denied having made any comment in the street about Moore "ratting" on people; he said that he had no knowledge of Moore with respect to any crime with the exception of the problems Moore had with the former tenant, Johnson.

He also denied having made any comment about Moore being a "faggot". He said that he had no knowledge of Moore's sexual orientation, and in fact didn't believe Moore's comment about a 'lover in the bedroom'. In cross examination, he said that he didn't recall ever arresting Moore for "drinking"; searching him, finding and disposing of hashish, and suggesting to Moore that he therefore "owed Hussey a favour", and that Moore could be an informant. He had no recollection of Moore indicating his sexual orientation in the course of the alleged arrest.

None of the above suggestions put to Hussey in cross examination were ever adduced through Moore's direct evidence, or the evidence of any other witness called on Moore's behalf.

Hussey also said in cross-examination that Moore's information that he carried his gun on the left side could have been obtained through Moore's presence at a couple of subsequent incidents in the neighbourhood.

He was unable to produce any notes taken that evening; he said that he relied on Graham's notes to prepare the Crown Sheet, and that the crown sheet entries would constitute his notes.

Moore's position in short is that the officers did not have any reasonable basis to believe that Marsman was in his apartment, and that they were essentially on a fishing expedition. He also perceives that the officers had no right to enter his premises against his wishes. He implies that the threat to shoot the dog was a means to coerce him into agreeing to a search. He also seems to suggest that the charge against him was laid in response to his Police Act complaint. He further argues that the assault charges against Marsman were withdrawn in return for Marsman's co-operation in the prosecution of Moore, and the defence of the Police Act complaint.

The presence or absence of Marsman / States from the Moore residence is irrelevant to the Board, except to the extent that it impacts on the credibility of the various witnesses. Whether he was or wasn't there, the Board is satisfied that the officers genuinely believed that he was in Moore's apartment, and that they perceived a somewhat urgent need to arrest him, based on the violence of the alleged assault on Ms. Bowden.

The Board places no weight whatsoever on the evidence of Marsman / States. He was a reluctant, evasive, and self absorbed witness. However, even without his evidence, we cannot accept Randall Moore's evidence that he did not recognize the surname of Marsman / States, whichever was initially put to him by officers Graham and Hussey. It is simply not believable that Randall Moore could have spent a considerable portion of his life in this small neighbourhood, and still be confused as to the identity of Robin....., and his various surnames. It does appear on the balance of probabilities that Mr. Moore was intent on deceiving the officers as to who was or wasn't in his apartment that night, although he may very well have genuinely and correctly believed that they were not entitled to search the premises without some form of warrant. Indeed, by their own evidence, the officers also did at least have some doubt in their own mind as to their justification, stemming from the decision in **R. v. Feeney**, [1997] 2 S.C.R. 117 in the Supreme Court of Canada.

Prior to **Feeney**, there existed a common law right to enter private premises to effect a warrantless arrest, provided that a) the officer had reasonable grounds to believe that the person

sought was within the premises; b) proper announcement was made; c) the officer believed reasonable grounds exist for the arrest, and d) objectively speaking, reasonable grounds for the arrest exist. However, the Supreme Court of Canada in **Feeny** ruled that even if these requirements were met, such an entry would violate Section 8 of the Charter of Rights and Freedoms. Sopinka, J. also ruled that in most cases, even the existence of an arrest warrant would not suffice, as such a warrant authorizes only an arrest, as opposed to the entry of premises. However, he held that if the Criminal Code did not provide for such a warrant, then a provision providing for such authorization could be read in.

The **Feeny** decision was released on May 22, 1997. The application of **Feeny** was stayed by the Court until December 19, 1997, pending amendments to the Criminal Code, but the stay did not occur until November 1997, well after the Moore incident. **Feeny** therefore represented the law at the time the officers entered Moore's apartment. In Moore's case, no special authorization existed with respect to the warrants, and there was clearly no authorization to enter to arrest without warrant.

As noted above, Hussey testified that after the initial attempt to persuade Moore to let them in, he was advised by the Crown that they could in fact go in, and that the only consequence of an entry might be the exclusion at trial of any statements taken. The Crown chose not to testify, and the Supreme Court, upheld in part by the Court of Appeal, ruled that in the circumstances of this case, the Crown was not compellable by subpoena issued by the Board.

In any event, if in fact that was the advice provided, the officers did not act on it. While they did enter the apartment on two occasions, we are satisfied that there was actual permission to enter the common areas of the building (by virtue of Moore leaving his keys with the police), and at least implicit permission for them to enter Moore's apartment as far as the kitchen. We have noted our concerns with Mr. Moore's credibility, and prefer the evidence of the officers as to the permission and extent of the initial entry into Moore's apartment unit. To the credit of the officers, they did not proceed with the search in the face of their own doubt, and at most, hoped to be able to persuade

Moore to allow them in. They may have been verbally assertive in their attempts to obtain consent from Moore, but when it became apparent that he was not going to be persuaded, they left. No further attempts were made following the advice from the Crown.

The officers acknowledge warning Moore that if his dog attacked, it could be shot, and that he was advised to restrain the dog. Moore's evidence does not differ greatly from theirs on that issue. The Board finds however, that the comments about the dog were not made with a view to obtain compliance from Moore, but rather were fair warning as to the consequences of an attack by the dog. The Board accepts that the dog was acting in an aggressive manner, and that the officers were justified in having some concerns about the risk, particularly when they were unable to understand Moore's commands, spoken in French.

We have not found Mr. Moore to be credible in his evidence with respect to Marsman's surname, and that has essentially damaged his credibility on all issues. We therefore are not satisfied on the balance of probabilities that Cst. Hussey actually drew his gun.

Mr. Moore suggests that Csts. Hussey and Graham then conspired to avenge his complaint against them. He implies that the assault charges against Marsman / States were withdrawn in exchange for his evidence that he was in Moore's apartment that evening. This evidence would also work against Moore in the subsequent obstruction charge. However, as Mr. Duncan points out in argument, this would involve a very extensive conspiracy, implicating Marsman / States, Bowden, Csts. Astephan, Graham, and Hussey, as well as Sgt. Downey and the office of the Crown. With respect, it defies credibility that all of these individuals would excuse a man believed to have committed a very violent assault on a woman, in order to avenge a Police Act complaint, and that they would jeopardize their own reputations and careers to do so.

Mr. Moore's complaint is therefore dismissed

DATED at Halifax, Nova Scotia this day of May, 2000

JEAN McKENNA
Alternate Chair

LINDA FRASER
Member

THERESA MEUSE
Member

Distribution:

Mr. Randall Walter Moore - Complainant
Constable Blair Hussey - Halifax Regional Police Service
Constable Gordon Graham - Halifax Regional Police Service
Mr. Patrick Duncan - Solicitor on behalf the named officer
Ms. Jean McKenna - Alternate Chairman NS Police Review Board
Ms. Theresa Meuse - Member
Ms. Linda Fraser - Member
Chief David P. McKinnon - Halifax Regional Police Service

File No. 97-0091

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 Notice of Review, in Form 13, filed
by **RANDALL WALTER MOORE**,
Complainant, against **CONSTABLE
BLAIR HUSSEY** and **CONSTABLE
GORDON GRAHAM** initiating a
review before the Nova Scotia Police
Commission of a decision of D/Chief
Frank Binns.

D E C I S I O N

Before:

Jean McKenna - Alternate Chair
Theresa Meuse - Member
Linda Fraser - Member