

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: An application filed by **Daniel Walsh**, Complainant, for an extension in time to file a complaint against **Sergeant Greg Densmore** of the Truro Police Service

BEFORE: Ms. Marion Ferguson Chair
Mr. Orville Symonds Member
Mr. Brian McIntosh Member

COUNSEL: Mr. Daniel Walsh on behalf of himself
Mr. David Fisher on behalf of Sergeant Greg Densmore
Mr. John Rafferty Q.C. on behalf of Chief Kenneth MacLean

HEARING DATE: April 1, 2004

PLACE: Howard Johnson Motel, Truro

DECISION DATE: April 30, 2004

DECISION: Application Denied

This matter came before the Nova Scotia Police Review Board sitting at Truro, Nova Scotia on April 1, 2004 by way of an application of Mr. Daniel Walsh under *Section 8* of the *Police Act Regulations*, to extend the time to file his public complaint against Sergeant Greg Densmore of the Truro Police Service.

Mr. Walsh represented himself and gave evidence.

Sergeant Densmore, who objected to the extension being granted, was represented by Mr. David Fisher. Mr. John Rafferty Q.C. appeared on behalf of Truro Police Service Chief Kenneth MacLean and supported the objection. Neither Sergeant Densmore nor Chief MacLean gave evidence before the Review Board.

FACTS

On October 20, 2003, Mr. Daniel Walsh filed a Form 5 public complaint under the *Police Act* stating “*Cst. Charleworth Sgt. Densmore after the incident*” as the “*member(s) involved*” in an October 3, 2003 incident, which apparently had occurred as a consequence of a public demonstration involving Mr. Walsh.

On January 5, 2004, Chief MacLean issued a Form 11 Disposition of Public Complaint in which “after reviewing the investigators report” he decided that the allegation against Constable Charlesworth was unfounded. The Form 11 makes no reference to Sergeant Densmore.

On January, 7 2004 Mr. Walsh filed a second Form 5 naming Sergeant Gregory Densmore, providing details of that officer’s alleged misconduct on October 3, 2004 and referring to specific sections of the *Police Act*. In summary, the offences charged relate to the manner in which the Sergeant had investigated the Constable Charlesworth matter.

On January 13, apparently in response to Chief MacLean’s decision dismissing the allegations against Constable Charlesworth, Mr. Walsh filed a Notice of Review naming both Constable Charlesworth and Sergeant Densmore.

As the second filed complaint of January 5 dealing with Sergeant Densmore’s alleged October 3 disciplinary defaults, was outside the 30 day statutory limitation period as set out in the Act, on February 9 Mr. Walsh commenced the extension application presently before the Review Board.

Section 7 of the *Police Act* Regulations states:

A member of the public may make a complaint concerning a member of a police force, including its chief officer, to

- (a) *the complaints officer of the police force of which the person complained of is a member or any member of that police force;*
- (b) *the board; or*
- (c) *the Commission*

***within thirty days after the occurrence which gave rise to the complaint.
(emphasis supplied)***

However, regulation 8 (2) provides that the Review Board may order that the complaint be proceeded with where:

- (a) *the complaint is filed within six months of the occurrence which gave rise to the complaint;*
- (b) *the complainant commences an application within six months of the occurrence which gave rise to the complaint for an order that the complaint be proceeded with;*
- (c) *the Review Board is satisfied that there are reasonable grounds for ordering that the complaint be proceeded with;*
- (d) *proceeding with the complaint will not unduly prejudice the member in respect of whom the complaint is made. (emphasis supplied)*

Mr. Fisher, counsel for Sergeant Densmore, acknowledged that the January 7, 2004 complaint had been filed within six months of the October 3, 2003 event complained of, that Mr. Walsh had commenced his application to extend the time within the statutory time limit established by the *Act* and that proceeding with the complaint would not unduly prejudice his client.

Consequently, the only issue to be considered by the Review Board on this application is:

- i. Are there reasonable grounds for ordering that the complaint be proceeded with;*

On October 3, 2003, during a public protest in the town of Truro, Mr. Walsh was involved in an incident with a number of Truro police officers, one of whom was Constable Colin Charlesworth. Contemporaneously with, or shortly after the incident involving Constable Charlesworth, Sergeant Densmore arrived on the scene. Sergeant Densmore apparently then intervened in a tense situation between Mr. Walsh and Constable Charlesworth. All witnesses, including the complainant, agreed that this intervention by Sergeant Densmore had been positive and had contributed to a “cooling down” of the situation between the complainant and the Constable.

Mr. Walsh’s October 20 Form 5 details the specifics of his complaint as follows:

“Use of excessive force during an arrest. Injuries included neck, shoulder, back, swelling, wrists swelled and bruised knees scraped and bruised. Further aggravated previous back and neck injury. Taken to hospital by ambulance, and returned on two occasions since the original visit. Will require physio.”

The Review Board notes that this section of the Form 5 is entitled “*Details of Complaint: (including any injuries, medical attention, etc.)*”

As required by the *Police Act*, the matter was investigated and as noted above, Chief MacLean decided that Mr. Walsh's allegations against Constable Charlesworth were not founded. The Chief's decision makes no mention of Sergeant Densmore.

On January 13, apparently in response to the Chief's decision, Mr. Walsh filed a Notice of Review, naming both Constable Colin Charlesworth and Sergeant Densmore.

In giving evidence, Mr. Walsh stated that he had no prior knowledge or experience with the police complaints process. After speaking with the Nova Scotia Police Commission, he testified that he contacted Ms. Diane Bennett-Cook, Chair of the Truro Police Commission to seek help in completing the necessary paperwork to get his complaint underway. Ms. Bennett-Cook took Mr. Walsh to see Town Chief Administrative Officer Jim Langille for additional help.

It was his evidence, which the Review Board accepts, that he was "very upset" as a consequence of the events of October 3 and while he agreed that the "main part" of his complaint was directed at Constable Charlesworth, his explanation for including the words "*Sgt. Densmore after the incident*" on the Form 5 was that he had "other issues" with the officer; in particular the way in which the Sergeant had carried out his investigation on that day.

Mr. Walsh went on to state that he had attempted to retain a number of lawyers but was unable to arrange representation because of counsels' conflicts of interest with the parties involved. It was his submission that he had gotten "inappropriate advice" from Mr. Langille and Ms. Bennett-

Cook, the latter of whom he believed had some expertise in the appropriate way in which police complaint forms were to be completed. This incorrect information had in turn, necessitated his filing a second Form 5 detailing Sergeant Densmore's specific alleged disciplinary defaults and the consequent extension application presently being made.

Both Ms. Bennett-Cook and CAO Mr. Jim Langille gave evidence.

Ms. Bennett-Cook confirmed that Mr. Walsh was upset when he contacted her and advised that he wanted to make a public complaint about his treatment by the local police. She said that she offered to attend at the police station with him so the he could fill out the requisite paperwork there but that when Mr. Walsh indicated he would not be comfortable doing that, she suggested they arrange to meet with Jim Langille. It was Ms. Bennett-Cook's understanding that Mr. Langille had previous experience filling out the forms required to commence a public complaint against a police officer.

It was agreed by Mr. Walsh, Ms. Bennett-Cook and Mr. Langille, that while Mr. Walsh had already filled in some of the personal information on the October 20 Form 5, prior to arriving at Mr. Langille's office that day, that it was in fact Mr. Langille, in consultation with Mr. Walsh, who filled in most of the Form 5. All three witnesses agreed that the majority of the printing is Mr. Langille's.

Ms. Bennett-Cook told the Review Board that Mr. Langille read back the completed Form 5 to Mr. Walsh, that Mr. Walsh then reviewed and signed it. It was her understanding, both from

her conversation with Mr. Walsh that day and from her observations of the review of the document by both herself and Mr. Langille with Mr. Walsh, that the complaint was against Constable Charlesworth alone. In her mind, the inclusion of the words “*Sgt Densmore after the incident*” referenced that officer’s positive intervention between Mr. Walsh and Constable Charlesworth, which is alluded to earlier in this decision and that it was not Mr. Walsh’s intention to express a complaint against the Sergeant.

In Ms. Bennett-Cook’s words, “she had no idea (*Mr. Walsh*) wanted to lay a complaint against Sergeant Densmore.”

Ms. Bennett-Cook’s impression of Mr. Walsh’s intention with respect to initiating his public complaint was shared by Mr. Langille.

It was Mr. Langille’s evidence that after the Form 5 was filled out, he read the complaint back to Mr. Walsh “on at least two occasions.” He also recalled Mr. Walsh taking time to review the complaint form and he specifically remembered asking Mr. Walsh whether he wanted to “file against Sergeant Densmore” and the answer was no.

Like Ms. Bennett-Cook, it was Mr. Langille’s understanding that Mr. Walsh was in fact endorsing the Sergeant’s involvement in the events of October 3 as having brought “more reason” to the situation with Constable Charlesworth. While it was Mr. Langille’s evidence that Mr. Walsh’s only concern on the filing of the complaint involved Constable Charlesworth, he did

confirm that there was a great deal of discussion during the meeting in his office of the events surrounding October 3. He said if he had recorded everything on the Form 5, it would have taken several additional pages of writing. In his words, it was his intention to “capture the essence of the complaint” with the words he used, with Mr. Walsh’s assistance, to complete the Form.

During his meeting with Mr. Walsh and Ms. Bennett-Cook, Mr. Langille said that he informed the complainant that there was a 30 day limitation period if additional complaints were being filed, a fact that had been previously testified to by Ms. Bennett-Cook.

Deputy Chief Delaney Chisholm gave evidence before the Review Board.

He testified that during his 31 years as a police officer he has gained considerable investigative experience, in particular as the head of the Major Crimes Unit of the New Glasgow Police Force, charged with investigating murders, sexual assaults and serious crime. As the investigating officer on the file, he met with the complainant at his home, during which time he said the two men discussed the complaint of alleged excessive force on the part of Constable Charlesworth.

It was the Deputy Chief’s evidence that he was “unaware of issues concerning Sergeant Densmore” and while he conceded that there may have been some possible comments involving the Sergeant during his conversation with Mr. Walsh, it was the officer’s evidence that nothing specifically involving any allegation of misconduct on the Sergeant’s part was mentioned by the

complainant. Deputy Chief Chisholm testified that he first realized there were allegations against Sergeant Densmore when he was served with a subpoena to attend the April 1, 2004 Review Board hearing.

Decision/Reasons

As noted above, the issue on this application is whether reasonable grounds exist for the Review Board to exercise its discretion under regulation 8 (2) (c) to grant the extension for Mr. Walsh to file his complaint against Sergeant Densmore.

The burden of establishing that reasonable grounds exist to grant the application in the instant case rests with Mr. Walsh. As no enumerated list of what constitutes “reasonable grounds” appears in the *Act*, that determination will be made on a case by case basis, considering the facts as they are found by the Review Board.

The often quoted decision by Saunders J. (as he then was) in *White v. Dartmouth (City) et al* (1991), 106 N.S..R. (2d) 45 at p. 51, as to the purpose of the *Police Act* states:

*“The Police Act does not expressly set out its purpose. However, it is obvious from this broad scope that the Act clearly covers both public protection from abuse of police power, and protection of police officers from unwarranted disciplinary action. **While this dual purpose offers no clear guidance to the interpretive issue**”*

facing me, it does suggest that a fair and proper balance be maintained between these two laudable objectives.” (Emphasis supplied).

So, while the *Police Act* puts in place a structure to allow public complaints against police officers to be resolved as fairly and as expeditiously as possible, this obviously must be done in a manner that serves the general interest of each of, the public, as well as the individual and the specific interests of the parties.

The Review Board accepts Mr. Walsh’s evidence that the process of making a public complaint against a policing authority can be difficult or even intimidating for some complaining citizens. While police departments throughout the Province do provide the necessary information to assist a citizen moving through the complaints process, the reality of initiating such a process, especially in a small community where anonymity can be illusory at best, is recognized as being difficult.

Consequently, Mr. Walsh’s decision to contact Ms. Bennett-Cook and in turn then seek the advice of Mr. Langille, shows initiative and persistence on his part and is to be commended.

As has been noted in other Review Board decisions, the 30 day time limit is a short time to make, what is a major decision for any person considering filing a complaint. It is obvious then, that a public process that seeks to involve an often unrepresented party, who will be facing a short limitation period and considering that heightened emotions can often be expected to be at play, that

the forms initiating this process must be user friendly and as straightforward as to their purpose and function as possible.

By way of observation, the Review Board notes the Form 5 used to commence the public complaint process, provides for the identification of the “*Member(s) involved;*” and it is here that Mr. Walsh listed the names of “*Constable Charlesworth Sgt. Densmore after the incident.*” No specific reference to members(s) complained of appears.

Mr. Walsh notes this and submits that his application is necessary because he was given “bad advice on what the complaint should have been about” and believed that the first Form 5 covered both officers.

With respect the Review Board does not agree.

Both Ms. Bennett-Cook and Mr. Langille were credible witnesses, who gave their evidence in a clear and straightforward manner. The Review Board accepts their individual submissions that they were not holding themselves out to be experts in filling out Form 5's but were offering help to Mr. Walsh, who had sought them out, each drawing from past experience in these and similar matters.

The Review Board finds that their assistance was sound and was responsibly given, with Mr. Walsh supervising the production of the complaint, reviewing its text and finally signing. While

particulars of Constable Charlesworth's alleged misconduct are set out, no such particulars are provided regarding any other officer, save for the reference "*Sgt. Densmore after the incident.*"

The explanation for this comment, namely that Sergeant Densmore was at the scene and was helpful in diffusing the Charlesworth-Walsh situation, is supported by both the evidence of Ms. Bennett-Cook and Mr. Langille and in part, by the evidence of Mr. Walsh, who agreed that Sergeant Densmore's involvement was helpful at this point. So too, Deputy Chief Delaney Chisholm, who testified that during his investigation of the matter, no mention was made to him by Mr. Walsh of any alleged misconduct on the part of Sergeant Densmore.

While it is of limited significance, this interpretation is consistent with the lack of reference to Sergeant Densmore on the Chief's January 5 decision on the original complaint.

However, this case does raise the interesting question as to whose responsibility it is to ensure that forms are properly filled out. As noted by Paul Ceysens in *Legal Aspects of Policing, Volume 2 (Earlscourt: loose leaf Edition to January 2003) at page 7-45:*

The issue of the standard of articulation of a public complaint has rarely been examined. The issue was discussed in a decision of a board of inquiry under the now repealed Part iv of the Ontario Police Services Act:

It is clearly intended that members of the public have a mechanism where their complaints may be brought forward and given official attention.

It is not realistic to expect that full detailed particulars be set out in the initial complaint, or that precise legal terminology be used. Even if the complaint had been fully completed by the complainant the Board would not expect that the complainant would necessarily know the exact words which should be used or would know how much or how little should be said.

It is enough to identify clearly the events complained of. It should be the job of those involved in the process later on to particularize the allegations.

Clearly, where competency is not at issue, there is an obligation on the part of the person bringing the complaint, to properly and as accurately as possible, in the circumstances of the particular case, identify the officer or officers complained about and what each may have done to warrant the complaint being filed.

As noted in the *White* case cited earlier in this decision, there are interests to be balanced in the Police Act process, and while an unrepresented citizen especially, should not be expected to complete forms as completely as a lawyer, or a public official who regularly deals with such documents might, a police officer against whom such a complaint is made is entitled to know at least the reasonable particulars of what he is alleged to have done.

Again from Ceysens at page7-6:

The public complaints process should be “reasonably” straightforward, and accessible and understandable to potential complainants as well as the police officer to whom it applies.”

Mr. Walsh testified that he had no idea that he had to file multiple complaints if more than one officer was involved in a complaint. The Review Board agrees with Mr. Walsh that there is no obligation to file a separate complaint for each officer who is alleged to have committed a disciplinary default and a review of past decisions reveals that the Review Board has considered many cases over the years when more than one officer is named on a Form 5. Moreover, there no doubt have been cases where the identify of a particular officer was not known to the complainant at the time of filing or cases where, during an investigation, an officer, un-named on the original Form 5 complaint, is identified by the investigator as being possibly culpable.

The Review Board assumes that in such cases, the investigator advises the Authority who in turn informs the complainant and the matter proceeds with this additional information being provided to the parties.

In this case, the lack of specificity on the October 20 Form 5, which names one officer and provides a description of his alleged misconduct, while naming a second officer, without similar detail should be a flag to the Authority that perhaps additional information may be required from the complainant and some official clarification made on the record. Such intervention may have prevented the confusion which ensued in this case.

The Review Board accepts that the forms utilized by a citizen at this crucial point of initiating a complaint, must be as clear, straight forward and user-friendly as possible. However, in this case the Review Board finds that after considering the totality of the evidence presented by the parties, that Mr. Walsh had not resolved to make a complaint against Sergeant Densmore at the

time he filed his October 20 Form 5 complaint and therefore, reasonable grounds for granting the extension have not been established.

The application is denied.

There will be no award as to costs.

Dated at Halifax, Nova Scotia this 30th day of April, 2004.

MARION FERGUSON
Chair

ORVILLE SYMMONDS
Member

BRIAN MCINTOSH
Member

Distribution List

Mr. Daniel Walsh - Complainant
Mr. David Fisher - Solicitor on behalf of named officer
Sergeant Gregory Densmore - Truro Police Service
Chief Ken MacLean - Truro Police Service
Mr. John Rafferty - Solicitor on behalf of Chief MacLean
Ms. Marion Ferguson, Chair, NS Police Review Board
Mr. Brian McIntosh, Member, NS Police Review Board
Mr. Orville Symonds, Member, NS Police Review Board

File No.: 04-0014

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:

An application filed by **Daniel Walsh**,
Complainant, for an extension in time to
file a complaint against **Sergeant Greg
Densmore** of the Truro Police Service

D E C I S I O N

Ms. Marion Ferguson, Chair
Mr. Orville Symmonds Member
Mr. Brian McIntosh, Member