

DECISION

File No. 03-0096

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 by Truro Deputy Chief of Police Glen Rogers for an extension of time pursuant to regulation 12(3) of the *Police Act* to investigate the public complaint of Mr. Robert A'Court against Sergeant Greg Densmore, Constable Colin Charlesworth, Constable Jeff Tremblett, Constable Darrin Smith and Constable Elliot Hebb, all of the Truro Police Service

BEFORE: Ms. Marion Ferguson, Chair

COUNSEL: Mr. David Fisher on behalf of Sergeant Densmore, Constable Colin Charlesworth, Constable Jeff Tremblett, Constable Darrin Smith, Constable Elliot Hebb of the Truro Police Service

Mr. John T. Rafferty, Q.C. on behalf of Chief Kenneth MacLean of the Truro Police Service

DECISION DATE: February 1, 2004

DECISION: Regulation 12(3) application to extend time granted

Background

On July 18, 2003 Mr. Robert A'Court filed a public complaint against Sergeant Greg Densmore, Constable Colin Charlesworth, Constable Jeff Tremblett, Constable Darrin Smith and Constable Elliot Hebb, all of the Truro Police Service, in relation to a June 1, 2003 incident.

As the *Police Act* requires that a public complaint be filed within 30 days of the event complained of, at the same time Mr. A'Court made his July 18 complaint, it was necessary for him to simultaneously request an extension of time to file the complaint.

On August 12, the Registrar of the Police Review Board advised the parties of the Complainant's request and provided an objection date of August 29, 2003. No objection was received and accordingly in a September 2, 2003 letter, the Registrar instructed Chief MacLean that a Notice of Completion of Investigation was required to be forwarded to the Police Commission "on or before October 31, 2004."

Regulation 10 (2) of the *Police Act* states:

10 (2) *Where the complaint does not relate to the chief officer, the complaints officer shall refer the complaint to the chief officer and the chief officer shall appoint a member of higher rank to investigate the complaint.*

Subsection 10(2) amended: O.I.C. 96-27, N.S. Reg. 8/96.

When the appointed investigator Sergeant Thibodeau reviewed the file, he realized that one of the respondent officers, Sergeant Densmore, was not of a lesser rank as stipulated by the *Act* and consequently, a second investigator, Deputy Chief Glenn Rogers was appointed to take over. On October 24, anticipating that he would not have the investigation concluded within the 60 days as provided for in the legislation, Deputy Chief Rogers wrote to the Police Commission requesting a time extension, advising that:

“Form 5 was sent to your commission in July by the original investigating officer, Sgt. Thibedeau, Truro Police Service. Due to administrative error the Form 8's were not served until this month. Cst. Jason MacKinnon was employed as summer staff and is no longer in the employ of Truro Police Service so I deem this investigation to no longer apply to him since he is no longer a police officer. I hereby request an extension to complete the investigation as I have taken over this investigation from the original officer and cannot have this investigation completed by October 31, 2003.”

Regulation 12(3) of the *Police Act* states:

- 12** (3) *An investigation shall be completed expeditiously and in any case within sixty days from the date the Form 5 of the Schedule is filed except that the chair of the Review Board may, upon request before or after the time limit has expired, extend the time to complete the investigation where the chair of the Review Board is satisfied that there are reasonable grounds for granting the extension and the extension will not unduly prejudice any member.*

On October 28, the Registrar of the Review Board wrote the Respondent Officers of the investigator's extension request and advised that if no objection were received by November 7, 2003 a 30 day extension would be granted to Deputy Chief Rogers.

On November 7, Sergeant Densmore, apparently writing on behalf of all the Respondent Officers, sent an e-mail to the Registrar objecting to the extension being granted on the grounds that:

“The complaint was filed past the time period for complaints to be laid and the complaint was granted this extension. The file was then given to the Truro Police Service to investigate and it appears that there was nothing done on this investigation. Now Deputy Chief Rogers has been assigned the investigation and has requested another extension. Speak (sic) on behalf of the members involved in this complaint we do not agree to the extension.”

By agreement of the parties, this matter was dealt with by way of written briefs to the Chair of the Review Board.

Submission of Mr. Fisher

In his November 17, 2003 submission on behalf of the respondent officers, Mr. Fisher argues that although the Department was advised of the error in appointing a Sergeant to investigate a Sergeant “ some time ago,” it took “ no action to reassign the investigation.” In his view, reasonable grounds for extending the investigation time would not include such an oversight and further, the Department's lack of initiative in moving the investigation forward,

once they learned that the original investigator could not lawfully proceed, did not constitute ‘reasonable grounds’ as contemplated by the *Act*.

Submission of Mr. Rafferty Q.C.

On January 9, 2004, counsel for Chief MacLean wrote the Chair arguing the extension should be granted. Mr. Rafferty noted that the investigation did not effectively proceed until August 29, 2003 when the deadline set by the Registrar for objecting to the Complainant’s application to extend the time for filing his complaint had passed. From Mr. Rafferty’s brief it appears that it was apparently shortly after this, that Sergeant Thibodeau realized that one of the Respondent officers was of equal rank and that he could not continue as investigator on the file. On September 8, 2003 after conferring with Chief MacLean, the file was reassigned to Deputy Chief Rogers.

Following that date, according to Mr. Rafferty, “ *the Deputy Chief reviewed the material then in the file, received a statement from Cst. Tremblett, prepared and served Form 8s on all of the named officers and arranged to meet with the complainant for a comprehensive statement*” on October 27. On the day of that arranged appointment, the Complainant telephoned to advise that he had to reschedule.

Mr. Rafferty writes:

“It would only be after meeting with the complainant and flushing out the information including possible witnesses that Deputy Chief Rogers could adequately perform his responsibilities.”

Mr. Rafferty submits that it was as a consequence of the 60 day limitation approaching, that Deputy Chief made his October 24, 2003 extension request which was objected to by the Respondent Officers.

Decision

Clearly, the import of the use of “expeditiously” in *Regulation 12(3)* and the imposition of a 60 day limitation period, support the view, inherent in Mr. Fisher’s submission, that an investigation should be carried out as efficiently and as quickly as possible. In fact, the Oxford English Reference Dictionary (second edition 1996) defines expeditious as “acting or done with speed and efficiency.” Any evidence that an investigator was not proceeding in the manner as directed by the *Act*, or evidence of any systemic or attitudinal factors preventing an investigation from proceeding in an “expeditious” manner, would appear to run counter to the intent of the legislation.

That being said, the drafters of the *Police Act* anticipated that there would be circumstances where extensions in time to complete an investigation would be appropriate, as long as the reasons supporting the application were “reasonable ” and not result in “undue prejudice to any member.”

While a list of these “reasonable grounds” is clearly not finite and “reasonableness” of such requests will depend on the particular circumstances present, the Chair agrees with Mr. Fisher’s comments that there should be actual reasons for why the investigation did not proceed “expeditiously,” other than simple inertia, before the Chair’s discretion in Regulation 12(3) is exercised.

Mr. Rafferty’s brief addresses the steps that the Department took once it determined that there was a problem with the initial investigator’s appointment. From his submission it appears that there were only about 10 days between the August 29, 2003 date (the first objection date provided by the Registrar in relation to the Complainant’s request to extend the time to file his complaint and the expiration of which permitted the complaint to go forward and be investigated) and September 8, 2003, when Sergeant Thibodeau and Chief MacLean, both apparently back from vacation, met and the decision made to reassign the file to the Deputy Chief.

As already outlined above, Mr. Rafferty’s brief relates what took place post September 8, including what steps the Deputy Chief took to pursue his investigation and the fact that a meeting with the Complainant had to be rescheduled.

As argument on this present application was by written brief, the Chair accepts such information on its face and finds that Mr. Rafferty's explanation for the need for the extension request is reasonable in the circumstances.

While neither party commented on this fact, the Chair notes that while Mr. A'Court's application to extend the time to file his complaint is dated July 6, 2003 it was date stamped received by the Police Commission on August 11, 2003 and it is possible that this may have contributed to the impression that the matter took too long to initiate an active investigation. However, as pointed out by Mr. Rafferty, the matter could not effectively proceed until the issue of the Complainant's extension request to file was dealt with and this occurred on August 29, 2003 with the expiration of the objection date as set by the Registrar.

The Chair also notes the fact that Mr. A'Court's complaint was outside the thirty day limitation for filing a public complaint as established under *Regulation 7*, referenced in Sergeant Densmore's November 7, 2003 e-mail to the Registrar, is not relevant to this application and had been decided prior to the present application proceeding.

Finally, in order to advance an argument of "undue prejudice" an officer would have to show that granting the extension would somehow interfere with his ability to fully and fairly participate in any disciplinary proceedings that might ensue as a consequence of the investigation going ahead and no evidence was presented to support such a finding.

Consequently, after considering the submissions of the parties, the Chair finds that pursuant to Regulation 12(3) of the *Police Act*, reasonable grounds have been established to permit her to exercise her discretion to extend the time to complete the investigation and Deputy Chief Roger is granted 30 days from today's date to complete his investigation in this matter.

Dated at Halifax, Nova Scotia this 1st day of February, 2004.

MARION FERGUSON
CHAIR

Distribution

Mr. David Fisher - Solicitor on behalf of the named officers
Mr. John T. Rafferty - Solicitor on behalf of Chief Kenneth MacLean
Chief Ken MacLean - Truro Police Service
D/Chief Glenn Rogers - Truro Police Service
Sergeant Greg Densmore - Truro Police Service
Constable Colin Charlesworth - Truro Police Service
Constable Jeff Tremblett - Truro Police Service
Constable Darrin Smith - Truro Police Service
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DECISION

Before:

Marion Ferguson - Chair