

DECISION

File No. 03-0024

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 **Patrick Hawco**, Complainant, for an extension in time to file a complaint against **Detective Constable James Murphy** of the New Glasgow Police Service

BEFORE: Ms. Marion Ferguson Chair
Mr. Lester Jesudason Alternate Chair
Mr. Brian McIntosh Member

COUNSEL: Mr. Patrick Hawco on behalf of himself
Mr. David Fisher on behalf of Detective Constable James Murphy
Chief Lorne Smith on behalf of himself

HEARING DATE: October 29, 2003

PLACE: Nova Scotia Police Commission Office, Halifax, Nova Scotia

DECISION DATE: January 13, 2004

DECISION: Application granted.

This matter came before the Nova Scotia Police Review Board sitting at Halifax, Nova Scotia on October 29, 2003 by way of an application of Mr. Patrick Hawco under *Section 8* of the *Police Act* Regulations, to extend the time to file his complaint against Detective Constable James Murphy of the New Glasgow Police Service.

The hearing was conducted by way of telephone conference and Mr. Hawco, who is presently an inmate at Dorchester Penitentiary, New Brunswick was affirmed by Ms. Joanne Richard, a Commissioner of Oaths for that Province.

Mr. Hawco represented himself. Detective Constable Murphy was represented by Mr. David Fisher. Chief Lorne Smith appeared on his own behalf.

FACTS

On March 6, 2003, Mr. Patrick Hawco filed a public complaint against Detective Constable James Murphy of the New Glasgow Police Service.

The March 6, 2003 Form 5 initiating the process and received by the Nova Scotia Police Commission on March 16, 2003, refers to an incident of January 14, 2003. In the section providing for complaint details is the notation “previously forwarded in letter of March 3, 2003 File #03-0024.” Included with the Form 5 is a page of handwritten notes signed “Patrick Hawco,” dated March 7, 2003 and requesting a time extension to file his complaint against the named officer.

The Review Board notes an earlier February 17, 2003 letter to the Nova Scotia Police Commission signed “Patrick Hawco” advising, “I am filing this complaint *against* (sic) Cst. Jamie Murphy of New Glasgow Police Dept.” and date stamped received by the Commission on March

3, 2003. This would appear to be the “March 3, 2003” letter referenced by the Applicant in the Form 5 discussed above.

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.

As both the February 17, 2003 letter and the March 6, 2003 Form 5 were outside the 30 day period set out in the Regulations, on March 7, 2003 Mr. Hawco applied to extend the time for filing his complaint.

Section 8 of the *Police Act* Regulations provides:

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- (1) ***Despite Section 7, a complaint may be filed following the thirty-day period referred to in section 7, but the complaint shall not be proceeded with unless the Review Board orders that the complaint be proceeded with.***
 - (2) *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 added.)

Mr. David Fisher, counsel for Detective Constable Murphy agreed that the complaint had been filed within six months of the January 14, 2003 occurrence date and that Mr. Hawco had commenced his application to extend the time for filing within the statutory time limit established by the *Act*.

Consequently the two issues to be considered by the Review Board on this application are:

1. Are there reasonable grounds for ordering that the complaint be proceeded with; and
2. Will proceeding with the complaint unduly prejudice Detective Constable Murphy.

ISSUE I

Are there reasonable grounds for ordering that the complaint be proceeded with;

On January 14, 2003 Ms. Stephanie MacLeod, the spouse of Mr. Hawco was interviewed by Detective Constable Murphy. Following the interview and as a consequence of it, Ms. MacLeod made a public complaint to the Nova Scotia Police Commission alleging that the officer had committed a disciplinary default, contrary to the Code of Conduct and Discipline set out in section 5(1)(a) (i) of the *Police Act* Regulations.

In particular, Ms. MacLeod's complaint alleged that she was pressured by the Officer to give a statement against Mr. Hawco, which involved in part, money being forwarded to him at Dorchester Penitentiary.

In accordance with the *Police Act*, Ms. MacLeod's complaint was investigated and on March 18, 2003 Chief Lorne Smith issued a Form 11 Disposition of Public Complaint, stating that he concurred with the investigator's report that no grounds existed to substantiate Ms. MacLeod's allegation against Detective Constable Murphy. The matter was dismissed and no appeal was taken by Ms. MacLeod from the Chief's decision.

On February 17, 2003, while the MacLeod matter was being investigated, Mr. Hawco wrote the Police Commission advising, " I am filing this complaint *agaianst (sic)* Cst. Jamie Murphy of New Glasgow Police Dept."

While Mr. Hawco's letter deals primarily with the aforementioned January 14 meeting between Ms. MacLeod and Detective Constable Murphy, it goes on to state that as a consequence of Detective Constable Murphy's contact with Dorchester Penitentiary to advise that Mr. Hawco had been "involved in a crime," Mr. Hawco's account was frozen causing him "undue financial hardship."

It is the position of Detective Constable Murphy, supported by Chief Lorne Smith, that Ms. MacLeod's complaint, which was investigated and found not to be substantiated, involved the same issues raised by Mr. Hawco's subsequent complaint and therefore, his application should fail.

Further, Chief Smith submits that as Mr. Hawco's complaint includes four issues involving Ms. MacLeod, that effectively transforms the matter into a third party complaint being made on his wife's behalf and consequently, to meet the *Act's* procedural requirements, her signature on the March 6, 2003 Form 5 is required.

Section 9(1) *Police Act* Regulations states:

- 9 (1) *Subject to subsection (2), a member of the public may file a complaint despite the occurrence which gave rise to the complaint having personally affected a member of the public other than the complainant. (emphasis added)*
- (2) *Except where the member of the public personally affected by the occurrence which gave rise to the complaint is not competent to give consent, a complaint filed pursuant to subsection (1) will not be accepted for filing unless the member of the public personally affected by the occurrence which gave rise to the complaint consents to the processing of the complaint under these regulations by endorsing the complaint in writing at the time the complaint is submitted for filing. (emphasis added)*

While it is true that the particulars of Mr. Hawco's February 17, 2003 letter deals in large measure with Ms. MacLeod and her interview with Detective Constable Murphy, the letter also identifies the effect that the investigation had on Mr. Hawco personally; specifically the alleged contact with Dorchester Penitentiary officials resulting in the freezing of his account.

Therefore, the Review Board finds that Mr. Hawco's complaint is not a third party complaint requiring the consent of Ms. MacLeod to proceed.

In his submissions before the Review Board, Mr. Hawco gave evidence on his own behalf.

In explanation for the delay in forwarding his initial February 17 letter and later March 6 Form 5 to the Police Commission, Mr. Hawco told the Review Board it is "not easy" to get correspondence prepared in prison and it was necessary for him to get paper from the librarian and then to arrange for another inmate to type the letter. Once he was able to borrow a stamp, he forwarded his complaint to the Police Commission.

The Applicant did not dispute Mr. Fisher's submission that on account of his previous experience of filing public complaints with the Police Commission, Mr. Hawco was aware of the statutory time limits.

Mr. Hawco testified that in an effort to properly formulate his complaint, it was also necessary for him to get information from prison administration as to why his savings account, to which his pay as a cleaner was being deposited, had been frozen. He testified that he discovered this had been done when he attempted to pay his phone bill and it was his submission that Dorchester Warden Mills made this decision based on information received from Detective Constable Murphy.

According to Mr. Hawco, once he obtained the information as to whom may have been involved in the matter, he appealed the decision to OCO (Office of Corrections Officer) and in June 2003 his funds were released. As to when he became aware that his account had been frozen, he answered that it was “possibly sometime in February” or “late January.”

Mr. Hawco agreed that he told Ms. MacLeod to file her complaint with the Nova Scotia Police Commission.

Detective Constable Murphy did not give evidence.

In his submission on behalf of Detective Constable Murphy, Mr. Fisher pointed out that the burden is on the Applicant to convince the Review Board to exercise its discretion in his favour by establishing that reasonable grounds exist to extend the time for filing.

Further, he argued that Ms. MacLeod, acting on her husband’s instructions, filed her complaint against Detective Constable Murphy which was properly investigated with a finding of no disciplinary default. Mr. Fisher submitted Mr. Hawco’s subsequent complaint was essentially the same as Ms. McLeod’s complaint that had been disposed of in accordance with the *Act* and therefore, no reasonable grounds exist to extend the time for filing, especially in light of Mr. Hawco’s knowledge of the process.

It is clear that under the *Police Act* Regulations a public complaint is to be filed within 30 days of the event complained of and as stated above, this is not a situation where the Complainant was unaware of those limitation periods.

Section 1(e) of the *Police Act* defines *complaint* as:

“... any communication received from a member of the public in writing, or given orally to the chief officer or his delegate and reduced to writing and signed by the complainant, which alleges that a member of a force breached the Code of Conduct and Discipline or alleges the failure of the force itself to meet public expectations.”

While the March 6 Form 5 has been regarded as commencing Mr. Hawco’s complaint against Detective Constable Murphy, the Applicant’s February 17 letter clearly comes within the definition of a complaint as set out above. Attached to the letter was an inmate request form dated February 18 with the reasons for the request being stated as follows:

I am requesting that I be provided with the documentation in the form of the official request C.S.C. alleges it received from New Glasgow Police to freeze my account.

The Review Board finds that after considering the evidence, that Mr. Hawco’s explanation for why he did not submit his complaint, whether it be the February 17, 2003 letter or the more formalized March 6, 2003 Form 5, was reasonable and that the complicating reality of attempting to access a public complaints process from prison would create logistical problems that most citizens would not face.

It is significant to note that if Mr. Hawco's application had been filed within the requisite 30 day limitation period then the investigation would have proceeded in accordance with the Regulations. Further to this fact, the Review Board has noted in several of its previous decisions the "extremely abbreviated" reality of a 30 day limitation period for initiating a public complaint concerning the alleged misconduct of a police officer.

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."

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 must be done in a manner that serves the general interest of both the public, the individual, and the specific interest of the parties.

On balance, in this case, the Review Board finds that although Mr. Hawco had previous experience in filing public complaints with the Police Commission, the lateness of the filing is understandable in these particular circumstances and that reasonable grounds have been established to permit the Review Board to exercise its discretion to grant the application.

ISSUE 2

Will proceeding with the complaint unduly prejudice Detective Constable Murphy.

Mr. Fisher argued that to put Detective Constable Murphy through a second investigation for the same matter would unduly prejudice the member. The Review Board considered this submission closely and in light of the balance underlying the policy of the *Act*. Particularly, the Review Board is mindful that the police complaints process is not intended as a vehicle for retribution by a citizen who considers himself wrongly done by a police officer or as means of harassing officers.

In considering Mr. Fisher's submissions, the Review Board was provided with Ms. MacLeod's January 24 letter to the Police Commission in which she outlines her perceived mistreatment by the Officer in his efforts to obtain a statement about her husband.

While Mr. Hawco's complaint also details his concerns about the approach and manner of the Officer's interrogation of Ms. MacLeod, it specifically addresses the impact that the interview had on him personally; namely the alleged resultant call to Dorchester Penitentiary officials resulting in his account being frozen. Consequently, the Review Board finds that nature of Mr. Hawco's complaint is significantly different from the MacLeod matter.

Finally, it must not be forgotten that the granting of this application will only trigger an investigation into the merits of Mr. Hawco's complaint.

Therefore, after considering the foregoing, the Review Board finds that as reasonable grounds for exercising its discretion have been established by the Applicant, and as no undue prejudice as contemplated under the *Act* will result to the named Officer, Mr. Hawco's application to extend the time to file his complaint is granted.

There will be no award of costs to either party.

Dated at Halifax, Nova Scotia this 13th day of January, 2004.

MARION FERGUSON
Chair

LESTER JESUDASON
Alternate Chair

BRIAN MCINTOSH
Member

Distribution:

Mr. Patrick Hawco - Complainant

Mr. Ken Porier - Visitor's Section, Dorchester Penitentiary

Mr. David Fisher - Solicitor on behalf of named officer

Cst. James Murphy - New Glasgow Police Service

Chief Lorne Smith New Glasgow Police Service

Ms. Marion Ferguson, Chair, NS Police Review Board

Mr. Lester Jesudason, Alternate Chair, NS Police Review Board

Mr. Brian McIntosh, Member, NS Police Review Board

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D E C I S I O N

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Mr. Brian McIntosh, Member