

PROVINCE OF NEW BRUNSWICK

IN THE MATTER OF THE *NEW BRUNSWICK POLICE ACT*

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

**INSPECTOR MIKE
YOUNG**

Complainant

- and -

**CONSTABLE JONATHAN
GRENIER**

Respondent

Appearances:

- Jamie Eddy, Esq. and Matthew LeBlanc, Esq. for Robert Bruce, Chief of the Saint John Police Force
- Robert Davidson and Constable Duane Squires for Constable Jonathan Grenier
- Constable Jonathan Grenier

Hearing date: October 5th, 2022

1. Introduction

1.1. This matter arises from a Notice of Arbitration Hearing issued by Chief Robert M. Bruce (the “Chief”) to Constable Jonathan Grenier (the “Respondent”) and dated September 1st, 2022, which has been marked in these proceedings as Exhibit 1.

2. The Complaint

2.1. Exhibit 1 outlines the alleged misconduct of the Respondent (the “Allegation”). At this stage, it is unnecessary to reference the details of the Allegation except to note that it has been

advanced as discreditable conduct and neglect of duties under sections 35, 36, and 37 of the *Code of Professional Conduct Regulation*, NB Reg 2007-81 (the “Code”).

3. The commencement of the Hearing

3.1. At the outset of the Hearing of this matter on October 5th, 2022, the appointed stenographer, Lindsay Theriault, was sworn in pursuant to s. 23(3) of the *Code*.

4. The parties

4.1 On page 2 of Exhibit 1, the parties are identified as the Chief and the Respondent. This is consistent with section 17.94 of the Police Act, SNB 1977, c P-9.2 (the “*Act*”).

4.2. The Complainant in this matter is Inspector Mike Young (“Young”). However, the parties disagree as to whether Young made the Complaint in his own capacity or as the Chief’s designate.

5. Appearance of the Respondent and the representatives of the parties

5.1. Section 14 of the Code permits the parties to be represented in the hearing of the Allegation. During the hearing of this matter on October 5th, 2022, Mr. Eddy and Mr. LeBlanc identified themselves as the Chief’s representatives. Given the nature of this proceeding and the requirement of s. 26 of the Code, the Respondent attended the hearing and confirmed on that record that Mr. Davidson and Mr. Squires are his representatives in this matter and that he has expressly authorized his representatives to bind the Respondent.

5.2. The Respondent requested to appear at the hearing on October 5th, 2022 by Zoom because he was ill with COVID. The Chief did not object to the Respondent’s virtual attendance at the hearing via Zoom, which virtual attendance is permitted under s. 10(4) of the *Code*. It was agreed by the parties that, should the hearing of this matter continue, the Respondent may participate virtually unless he testifies further, in which case the Chief will not consent to the Respondent’s further virtual testimony.

6. The appointment of the arbitrator

6.1. I was jointly appointed by the parties. Prior to acceptance of the appointment, however, I confirmed compliance with s. 8 of the *Code*. Additionally, I advised the parties through email correspondences on September 21st and 22nd, 2022 and October 3rd, 2022 that:

- a. I am unaware of any circumstances in which I have, or any member of my firm has, provided advice to or has received information from anyone in respect of the Allegation;

- b. I have, and my firm has, provided and do provide legal advice on matters unrelated to the Allegation to individuals and entities who have or may have interests in this Hearing.

6.2. The parties have confirmed, both in writing prior to my acceptance of appointment as arbitrator and on the record at the outset of the hearing of this matter, that:

- c. The parties do not perceive a conflict of interest or any reasonable apprehension of bias on my part in respect of acting as arbitrator in this matter;
- d. In any event, the parties expressly waive any conflict of interest or apprehension of bias on my part in respect of active as arbitrator in this matter.
- e. The parties jointly request that I proceed as arbitrator in this matter.

7. Service of Exhibit 1 and the timing of the hearing

7.1. At the commencement of the hearing, the parties confirmed that:

- a. Exhibit 1 was personally served on the Respondent on September 6th, 2022 and that the requirement of s. 11 of the *Code* (to commence the hearing within 30 days after the date of service) has therefore been satisfied.
- b. The parties received a Notice of Hearing dated September 22nd, 2022 (the “hearing notice”) and, consequently, the requirement of s. 10(1) of the *Code* (to notify the parties of the date, time and place of the hearing) has been satisfied.
- c. Having commenced on October 5th, 2022, the hearing must be completed on or before December 4th, 2022 in order to satisfy the requirement of s. 11(b) of the *Code*, unless it is determined that an adjournment that would extend beyond 60 days from October 5th, 2022 is warranted pursuant to s. 21 of the *Code*.

8. Reading of the alleged breach of the *Code* to the Respondent

8.1. In accordance with s. 26(1) of the *Code*, I read the alleged breach of the *Code* to the Respondent at the commencement of the hearing. Because the Respondent was participating virtually, Mr. Davidson positioned himself close to the computer screen on which the Respondent was appearing to ensure that the Respondent heard the Allegation as read from Exhibit 1.

8.2. After the alleged breach of the *Code* was read, the Respondent was provided an opportunity to admit or deny the Allegation. The Respondent denied the Allegation, which denial was recorded.

9. Preliminary motion regarding the appointment of an investigator within 30 days of the filing of the complaint

9.1. Following the Respondent's denial of the alleged breach of the *Code*, Mr. Davidson advanced a motion challenging the arbitrability of the Allegation (the "Motion"). The Motion asserts that the Chief failed to appoint an investigator within 30 days of the filing of the Complaint in accordance with s. 28.1(1) of the *Police Act*, SNB 1977, c P-9.2 (the "Act"):

28.1(1) If the chief of police conducts an investigation into a conduct complaint, the chief of police shall, within 30 days after the filing of the complaint

- (a) appoint as an investigator a member of a police force to which the police officer being investigated belongs and who is of a higher rank than the police officer being investigated,
- (b) appoint as an investigator a member of another police force who is of a higher rank than the police officer being investigated, or
- (c) appoint an investigator from the list established and maintained under section 26.2.

9.2. In respect of the Motion, the following documents were entered into evidence by the consent of the parties:

Exhibit 2: A document commencing with an email from Young to Sarah Hobbs dated March 9th, 2022 at 12:42pm (4 pages).

Exhibit 3: A document commencing with an email from Sarah Hobbs to nbpc@gnb.ca (the New Brunswick Police Commission, hereinafter the "Commission") dated March 16th, 2022 at 12:16pm (6 pages).

Exhibit 4: A document commencing with an email from the Commission to the Chief dated March 17th, 2022 at 12:39pm (7 pages).

Exhibit 5: A document commencing with an email from Sarah Hobbs to the Commission dated March 16th, 2022 at 12:16pm (7 pages), being comparable to Exhibit 3 but with the addition of an email from Young to Sarah Hobbs dated March 8th, 2022 enclosing an email from Dwayne Hussey to Young dated March 8th, 2022.

Exhibit 6: A document commencing with an email from the Commission to the Chief dated March 17th, 2022 at 12:39pm (8 pages), being comparable to Exhibit 4 but with the addition of an email from Young to Sarah Hobbs dated March 8th, 2022 enclosing an email from Dwayne Hussey to Young dated March 8th, 2022.

Exhibit 7: A document commencing with a copy of correspondence from the Chief to the Respondent dated March 21st, 2022 on the subject “Notification of Substance of Conduct Complaint – Inspector Mike Young v. Constable Jonathan Grenier, Saint John Police Force (4 pages).

Exhibit 8: A copy of a document titled “Notice of Appointment of Investigator” issued by the Chief and dated April 14th, 2022 (1 page).

Exhibit 9: A copy of a document titled “Notice of Settlement Conference” issued by the Chief to the Respondent and dated September 1st, 2022 (3 pages).

Exhibit 10: A copy of a portion of a document titled “Investigation Report” issued by Staff Sergeant Sean Rocca and dated June 9th, 2022 (3 pages).

Exhibit 11: A document commencing with an email from Rick Votour to Lisa Mahaney dated April 12th, 2022 (2 pages).

Exhibit 12: A document titled “Process Maps” prepared by the Commission (7 pages).

9.3. Additionally, both the Respondent and Rick Votour gave viva voce testimony regarding the Motion. After giving a solemn affirmation as a witness, the Respondent testified on his own behalf at the direction of Mr. Davidson, was cross-examined by Mr. Eddy, and was subjected to re-direct by Mr. Davidson. Mr. Votour testified at the direction of Mr. Eddy, was cross-examined by Mr. Davidson, and was subjected to re-direct by Mr. Eddy.

9a. The sequence of events

9.4. The sequence of events relating to the Allegation is set out below.

- a. On March 4th, 2022, Staff Sergeant Dwayne Hussey (“Hussey”) allegedly observed the Respondent participating in the conduct that is reflected in the Allegation. On March 8th, 2022, Hussey emailed Young regarding the conduct(see Exhibit 5, page 7).
- b. On March 9th, 2022, Young emailed Staff Sergeant Sarah Hobbs (“Hobbs”) and enclosed a document titled “Complaint by Chief of Police/Civic Authority – NBPC CP/CA Complaint form (06-21)” (the “Complaint”, see Exhibit 2).
- c. No evidence was adduced regarding what, if anything, occurred between March 9th, 2022 and March 16th, 2022 regarding the Complaint. However, Hobbs emailed the Complaint to the Commission on March 16th, 2022 (see Exhibit 3).
- d. On March 17th, 2022, the Commission emailed the Chief and attached correspondence from

the Executive Director of the Commission, Jennifer Smith, to the Chief (the “NBPC Correspondence”, see Exhibit 4). The NBPC Correspondence asserts that the Complaint was made by Young on behalf of the Chief and that the Commission characterized the Complaint as a conduct matter.

- e. On April 12th, 2022 at 9:59am, Votour emailed Lisa Mahaney (“Mahaney”), the Chief’s assistant, in which Votour erroneously advised that the Chief was required to appoint an investigator by April 17th, 2022. Approximately 10 minutes later, Votour sent a second email to Mahaney advising that the Chief was required to appoint an investigator by April 15th, 2022 and not April 17th (see Exhibit 11 and the testimony of Votour).
- f. Staff Sergeant Sean Rocca (“Rocca”) was appointed as the investigator of the Complaint on April 14th, 2022 (see Exhibits 8 and 10).
- g. Rocca completed his Investigation Report on June 9th, 2022 (see Exhibit 10). It appears that Rocca’s findings were communicated to the Respondent on June 17th, 2022 (see Exhibit 9).
- h. In support of his position, the Respondent referenced p. 5-44 of Ceyskens, Paul. *Legal Aspects of Policing; Capilano University Faculty Association v Capilano University*, 2014 BCSC 712; *Greater Essex County District School Board v United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552*, 2012 ONCA 482; and *Bessette v. Attorney General of British Columbia et al.*, 2019 SCC 31 (CanLII).

9b. The position of the Respondent

9.5. As the proponent of the Motion, the Respondent argued that:

- a. The *Act* contemplates that a complaint may be filed with either the Chief or the Commission:

25(2)A person shall file a conduct complaint in writing with the chair of the Commission or with the appropriate chief of police or civic authority.

- b. Young’s email correspondence to Hobbs on March 9th, 2022 was a complaint filed in writing with the Chief. On this point, the Respondent argues that the form on which a complaint is filed is not determinative of the complaint process under the *Act* and the *Code*. In cross-examination, Votour agreed. The fact that Young prepared the Complaint on a Commission form does not, in the Respondent’s position, preclude the filing of the Complaint with the Chief.

- c. Since Young's email correspondence to Hobbs on March 9th, 2022 constituted a complaint under s. 25(2) of the *Act*, the requirement of s. 28.1(1) of the *Act* to appoint an investigator within 30 days became effective on March 9th and not March 16th, 2022.
 - d. Exhibit 8 demonstrates that Rocca's appointment occurred on April 14th, 2022, which was not within the 30 day time period beginning March 9th, 2022. Further, and importantly, in Exhibit 10, page 3, Rocca wrote that "On March 9, 2022, Inspector Mike Young filed a complaint against Constable Jonathan Grenier (Respondent Officer) with Chief Robert M. Bruce, Saint John Police. On March 16th, 2022, the complaint was then filed with the New Brunswick Police Commission."
- 9.6. The Respondent testified that he received Exhibit 7 on March 28th, 2022. This date is significant to the Respondent because it is his birthday. Exhibit 7 includes correspondence from the Chief to the Respondent dated March 21st, 2022 as well as a copy of the Complaint (for clarity, the Complaint copy contained in Exhibit 7 is referenced herein as the "Exhibit 7 Copy"). It was noted that the copy of the Complaint included in Exhibit 7 differs from the copy found beginning at the third page of Exhibit 4 (the "Exhibit 4 Copy"). The Exhibit 4 Copy includes a stamp at the top of the first page with the phrase "Mar 16 2022 Complaint Filed".
- 9.7. In summary, the Respondent argues that Exhibit 2 is evidence of a complaint regarding the Allegation being filed with the Chief on March 9th, 2022. He makes reference to the distinction between the Exhibit 7 Copy and the Exhibit 4 Copy in as evidence that he was notified of the complaint received by the Chief and not the Complaint received by the Commission. Further, the Respondent asserts that, if a complaint regarding the Allegation was filed with the Chief at that time, the time limits imposed under the Act were triggered on March 9th and not on March 16th. Consequently, the 30 day time limit for appointment of an investigator under s. 28.1(1) of the Act ought to have commenced on March 9th and should have expired on April 8th, 2022. The Respondent observed that the time limits imposed in the *Act* and *Code* are critical to the overall fairness of the complaint process. In that regard, the Respondent emphasized the effect of s. 26.8(3) of the *Act*, which imposes a limit of 180 days in which a police officer may be suspended with pay during a complaint process.

9c. The Chief's response to the Motion

- 9.8. The Chief argues that the Complaint was not filed with him and, instead, was filed with the Commission. Additionally, the Chief asserts that the *Act* does not preclude the filing of a complaint with both the Chief and the Commission and that, in those circumstances, the characterization under s. 25.2 of the *Act*, and the processing of the complaint pursuant to s. 27.3(1), dictate the application of the relevant time limits.

10. Issues for determination

- 10.1. *Issue 1:* Was the time limit for appointment of an investigator under s. 28.1(1) of the *Act* triggered on March 9th, 2022?
- 10.2. *Issue 2:* If the answer to Issue 1 is affirmative, is the hearing of the Allegation terminated?

11. Decision

- 11.1. The *Act* is equivocal regarding the manner in which conduct complaints are to be filed and processed. While Votour testified that Exhibit 12 may not be a current version of the Commission's process maps regarding complaints, the document does suggest that a complaint may be filed with either the Commission or a chief of police. Under Exhibit 12, if a complaint is received by the Commission, the Commission proceeds with characterizing the complaint under s. 25.2; if the complaint is received by a chief, the chief makes the characterization:

- 25.2(1)** Immediately after receiving a complaint, the chief of police, civic authority or Commission shall characterize the complaint as
- (a) a service or policy complaint,
 - (b) a conduct complaint, or
 - (c) a combination of the complaints referred to in paragraphs (a) and (b).

- 11.2. It is notable that s. 25.2(1) contemplates the receipt of a complaint while ss. 25(1) and 25.1(1) of the *Act* reference the filing of a complaint.
- 11.3. Under s. 25.2(1), a chief who receives a complaint must immediately characterize the complaint.
- 11.4. Further, if a chief receives and immediately characterizes a complaint, they must also notify the complainant and the Commission in writing of their decision:

- 25.2(5)** Where the chief of police or civic authority makes a decision on characterization, the chief of police or civic authority shall give the complainant and the Commission notice in writing of the decision.

- 11.5. Section 25.3(1) of the *Act* prescribes steps for the Commission to follow if a chief has characterized the complaint under s. 25.2(5):

- 25.3(1)** The Commission shall review the decision of a chief of police or civic authority on characterization under subsection 25.2(1) and shall

- (a) confirm the decision and give the chief of police or civic authority, as the case may be, notice in writing of its decision, or
- (b) rescind the decision, characterize the complaint and give the chief of police or civic authority, as the case may be, and the complainant notice in writing of its decision.

11.6. In Exhibit 12 and under the *Act*, if the Commission characterizes a complaint, the complaint is then to be returned to the chief for processing it:

27.3(1) If the Commission characterizes a complaint as a complaint concerning the conduct of a police officer or reviews the decision of a chief of police or civic authority on characterization and determines that the complaint concerns the conduct of a police officer, the Commission shall immediately refer the conduct complaint to the appropriate chief of police to process the complaint.

11.7. The combined effect of ss. 25(2), 25.2(1), 25.2(5), 25.3 and 27.3(1) is that a complaint is to be filed with and received by either a chief or the Commission, after which the recipient characterizes the complaint. If the complaint is characterized by the chief, then the chief must notify the complainant and the Commission in writing of the characterization. The Commission must either characterize the complaint under s. 25.2(1) or review the characterization decision of the chief under s. 25.3(1). In either case, the processing of the complaint, which includes the appointment of an investigator, is turned over to the chief.

11.8. In this case, an important question to be answered is whether Young's Exhibit 2 email to Hobbs (and copied to the Chief and Mahaney) amounts to a filing of the Complaint with the Chief. In answering this question, it is necessary to identify the limits of the evidence adduced in the hearing of the Motion, which includes the following:

- a. No evidence was adduced by either party as to the intent of Hussey to file a complaint against the Respondent under s. 25(2) of the *Act* or that Hussey advanced his March 8th, 2022 email (see Exhibit 5, page 7) to Young as a complaint.
- b. No evidence was adduced by either party as to the role of Young in receiving Hussey's March 8th, 2022 email or Young's intent in forwarding the Complaint to Hobbs (and copying the Chief and Mahaney) on March 9th, 2022. The Complaint enclosed in Exhibit 2 identifies the complainant as the Chief or his designate and is prepared on a Commission form. On the third page of the Complaint form (the fourth page of Exhibit 2), the following directive appears:

Please send this form and any supporting documentation to:

Complaints

New Brunswick Police Commission

435 King Street, Suite 202

Fredericton, NB E3B 1E5

Or

Email: nbpc@gnb.ca

- c. No evidence was adduced by either party as to the role of Hobbs in receiving Exhibit 2 from Young. While it is accepted (based on evidence including Hobbs' electronic signature on the email at page 1 of Exhibit 3) that Hobbs was, at the relevant time, a "Staff Sergeant/Professional Standards" in the Saint John Police Force, her role in complaint processes was not clarified.
- d. No evidence was adduced by either party to demonstrate what, if any, notifications under ss. 25.2(5) and/or 25.3(1) were received or issued.
- e. Rocca was not called as a witness by either party to testify regarding the meaning of the first paragraph on the third page of Exhibit 10 (the "Complaint Filing Paragraph"). If this paragraph had contained only the first or second sentence and not the other, then it might have attracted a heavier evidentiary weighting than it currently does. However, the Complaint Filing Paragraph must be read in the context of the remainder of Exhibit 10 and, in that regard, it must be noted that Rocca defines the "Complaint Filing Date" on page 1 of Exhibit 10 as March 16th, 2022.
- f. Votour testified that: he manages conduct complaints for the Commission; the Complaint was filed with the Commission on March 16th, 2022 and was characterized by the Commission as a conduct complaint; the Commission confirmed to the Chief on March 17th, 2022 that it had characterized the Complaint; and the Commission advised the Chief regarding the processing of the Complaint and the timing of appointment of an investigator.

11.9. In my view, the proper interpretation of the evidence adduced in respect of the Motion is that, on March 8th, 2022, Hussey provided a statement to Young regarding the Allegation, after which Young prepared the Complaint. A review of the Complaint document clearly confirms that it was prepared by Young as the Chief's designate on a form that invites filing with the Commission. While the Respondent is correct that the form used does not determine the filing of the Complaint, the fact that a Commission form was used is an indication, in the absence of evidence to the contrary, that Young intended to file the Complaint with the Commission as

the Chief's designate. On this point, it is notable that no evidence was adduced to the effect that Young's email correspondence to Hobbs on March 9th, 2022 (Exhibit 2) was intended to file the Complaint with the Chief under s. 25(2) of the *Act*. Further, the stamp at the top of the copy of the Complaint found beginning at the third page of Exhibit 4 is additional evidence to support the conclusion that Young, as the Chief's designate, intended to file the Complaint with the Commission. It is also notable that the events of March 16th, 2022 and after were consistent with the Complaint having been filed with the Commission on March 16th, 2022:

- a. The Complaint was "submitted" to the Commission on March 16th, 2022 (Exhibit 3). It was also stamped as having been filed with the Commission on that date (Exhibit 4).
- b. The Complaint was prepared on a form titled "Conduct Complaint by Chief of Police..."
- c. In Section A of the Complaint, it is indicated that the "Complaint is filed by [the] Chief of Police or designate". (Emphasis added)
- d. In Section C of the Complaint, the question is asked of the Chief or his designate: "Which police officer are you complaining about?"
- e. In Section J of the Complaint, it is clearly indicated that the Complaint is to be sent to the Commission, and not to the Chief.
- f. The correspondence and enclosure of the Commission to the Chief dated March 17th, 2022 (page 2 of Exhibit 4) asserts that:
 - i. The Complaint was made by Young on behalf of the Chief;
 - ii. The Commission stamped the Complaint as "filed" on March 16th, 2022;
 - iii. The Commission characterized the Complaint as a conduct matter;
 - iv. The Commission prescribed the date by which the Chief was to appoint an investigator.

These steps are consistent with the assertion that the Complaint was filed by the Chief's designate with the Commission and that the Commission characterized the Complaint before returning it to the Chief for processing in accordance with s. 27.3(1).

- 11.10. Absent from the evidence is any express intent on the part of Young to file the Complaint on his own accord and, further, to file it with the Chief pursuant to s. 25(2). Also absent is evidence that the Chief characterized the Complaint, that the Chief gave notice of any characterization decision to the Commission under s. 25.2(5), that the Commission reviewed a characterization decision of the Chief and decided to either confirm or rescind such decision pursuant to s. 25.3(1). Further, there is no evidence that the Commission notified the Chief of any review decision made by the

Commission under s. 25.3(1). While Rocca indicated in his investigation report that the Complaint had been filed on March 9th, 2022 with the Chief and on March 16th, 2022 with the Commission (see Exhibit 10), his report is internally inconsistent in that Rocca also clearly and unequivocally identified the date of filing of the Complaint, on page 1 of Exhibit 10, as March 16th.

Conclusion regarding Issue 1

It is concluded that, in this case, the Complaint was not filed with the Chief on March 9th, 2022 but, instead, was filed with the Commission on March 16th, 2022. Consequently, the appointment of the investigator on April 14th, 2022 was within the time limit imposed by the *Act*.

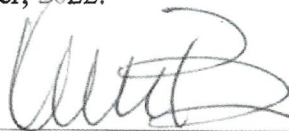
12. Determination of Issue 2

- 12.1. Because Issue 1 was answered in the negative, it is unnecessary to determine Issue 2. If it had been necessary to do so, an examination of the required procedure by which to challenge a procedural defect arising under s. 28.1 of the *Act*. In this regard, it is noted that s. 33.04 expressly empowers an arbitrator to cure a procedural defect relating to service of the Notice of Arbitration Hearing, which is a matter not in contention in this case. However, the Act does not extend the same express curative authority to an arbitrator in respect of s. 28.1 of the *Act*. This is an issue that may require attention in one or more future complaint cases.

13. Conclusion on the Motion

- 13.1. The Respondent's Motion highlights an apparent gap in the Act and Code regarding the filing of complaints. However, in this case, the evidence does not support a conclusion that the gap has been activated in respect of the Complaint. Instead, the evidence advanced in the hearing supports a finding that the Complaint was filed on March 16th, 2022 and not before that date.

Dated at Saint John, New Brunswick, this 12 day of October, 2022.



Kelly VanBuskirk, K.C., PhD, C.Arb.