

IN THE MATTER OF A PROCEEDING UNDER THE *POLICE ACT*, R.S.N.B.
1973, C. P-9.2

AND IN THE MATTER OF A NOTICE OF ARBITRATION HEARING DATED
FEBRUARY 7, 2013

AND IN THE MATTER OF A CONDUCT COMPLAINT OF RANDY KING

B E T W E E N

THE CHIEF OF POLICE,
SAINT JOHN POLICE FORCE
(the "Chief")

- and -

CONSTABLE CHRISTOPHER MESSER
(the "Officer")

Minutes of Settlement

WHEREAS the Officer is a police officer and a member of the Saint John Police Force;

AND WHEREAS a conduct complaint was filed against the Officer by Randy King;

AND WHEREAS the Chief served the Officer with a Notice of Arbitration Hearing dated February 7, 2013 a copy of which is attached as Exhibit "A";

AND WHEREAS the parties agreed that George P.L. Filliter ("Arbitrator Filliter") be appointed arbitrator to hear and determine the issues set forth in the Notice of Arbitration Hearing;

AND WHEREAS various preliminary issues have been dealt with in relation to this matter by Arbitrator Filliter;

AND WHEREAS the continuation of the arbitration was scheduled for April 30 and May 1, 2015,

AND WHEREAS the parties have agreed to resolve this matter;

AND WHEREAS Arbitrator Filliter is being requested to agree that the settlement set out below is an appropriate disciplinary and corrective measure in all of the circumstances.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The Officer will be subject to the following disciplinary and corrective measures designed to correct and educate the Officer.

a) A written reprimand from the Chief in relation to conflict of interest contrary to section 36(1)(a)(ii) of the Code of Professional Conduct prescribed by the *Code of Professional Conduct Regulation – Police Act*, NB Regulation 2007-81.

b) A direction to undertake professional counselling or a treatment program as directed by a qualified psychologist. The psychologist shall be requested to confirm the Officer's fitness for active duty and to identify any counseling or treatment required. The Officer agrees to have the qualified psychologist provide the Chief with a letter with the psychologist's assessment of whether the Officer is fit to resume active duty and the psychologist's recommendations (if any) for a counselling or treatment program.

c) A direction to undertake special training or retraining; including:

a) Review all standing, routine orders for compliance;

b) Complete all mandatory assignments and directives for compliance;

c) Successfully complete Firearm qualification;

d) Successfully complete Standard First Aid & CPR if certification has expired;

e) Attend a re-orientation meeting with the applicable Officer-In-Charge or his/her designate;

f) Meet with the Professional Standards Officer;

g) Successfully complete training on the use of force and officer safety training; and

h) Such other re-orientation, re-training or recertification as may reasonably be required by the Chief of Police to qualify the Officer for active duty.

The re-orientation training shall be provided under the direction of the Training Sergeant and/or Professional Standards Officer.

d) A direction to work under close supervision for a period of up to six (6) months.

2. Upon completion of the special training/retraining set out above, and any recommended counselling or a treatment program, the Officer shall be reassigned to the a Patrol Division platoon where he will work under the close supervision as directed by the responsible Staff Sergeant.

3. Arbitrator Filliter shall retain jurisdiction to deal with any matters arising under the interpretation or implementation of the Minutes of Settlement.

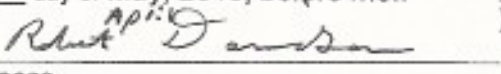
DATED this 30th day of April, 2015.

SIGNED, SEALED AND DELIVERED, this 30th)
30th day of ~~May~~ ^{April}, 2015, before me:)

Witness 



THE CHIEF OF POLICE, SAINT JOHN
POLICE FORCE

SIGNED, SEALED AND DELIVERED, this))
30th day of ~~May~~ ^{April}, 2015, before me::)

Witness 


CONSTABLE CHRISTOPHER MESSER

I have reviewed the above and find that the parties have identified appropriate disciplinary and corrective measures in all of the circumstances. It is therefore my decision to approve these Minutes of Settlement and to conclude the arbitration proceedings accordingly.


.....
George P.L. Filliter
Arbitrator



IN THE MATTER OF THE *POLICE ACT*, RSNB 1973, Ch. P-9.2;

AND IN THE MATTER OF A CONDUCT COMPLAINT AGAINST CONSTABLE
CHRISTOPHER MESSER BY RANDY KING

NOTICE OF ARBITRATION HEARING

TO: CONSTABLE CHRISTOPHER MESSER

BACKGROUND

After reviewing the investigation report prepared by Sergeant Brian Cummings of the Miramichi Police Force regarding the complaint against you by RANDY KING (the "Complaint"), I determined that there was sufficient evidence that you have committed breaches of the Code of Professional Conduct prescribed by the *Code of Professional Conduct Regulation – Police Act*, NB Regulation 2007-81 (the "Code"). I was therefore required to proceed to a settlement conference pursuant to section 28.4(1)(b) of the *Police Act*.

Accordingly, pursuant to section 28.7(1) of the *Police Act*, on January 24, 2013 you were notified of my decision to proceed with a settlement conference with respect to the Complaint (the "Settlement Conference") and served with a Notice of Settlement Conference to be held at the Chief's Board Room, Saint John Police Force Headquarters, One Peel Plaza, Saint John, New Brunswick on Friday the 1st day of February, 2013 at 10:00AM.

Pursuant to section 28.7(2)(d) of the *Police Act*, you were informed that if you did not attend the Settlement Conference, I would be required to serve a notice of arbitration hearing on you.

On February 1, 2013 I was informed by your Union representative that you would not be attending the Settlement Conference and in fact you did not attend at the date, time and place specified in the Notice of Settlement Conference.

1. NOTICE OF ARBITRATION HEARING

Therefore, pursuant to sections 28.7(2)(d) and 29.4(4) of the *Police Act* and section 9(1)(b) of the *Code of Professional Conduct Regulation – Police Act*, NB Regulation 2007-81 (the "*Code of Professional Conduct Regulation*") I am hereby serving you with this Notice of Arbitration Hearing.

2. PARTICULARS OF THE ACTS THAT CONSTITUTES THE ALLEGED BREACH OF THE CODE

The particulars of the acts or omissions that constitute the alleged breaches of the Code under section 35 of the *Police Act*, as disclosed by the investigation report, are as follows:

Count 1 – Discreditable Conduct

On or about the 22nd day of September, 2010, at or near the City of Saint John in the County of Saint John and Province of New Brunswick, you were, while on duty, abusive or oppressive toward Randy King: 1) by making a statement to him to the effect that King was lucky that you couldn't take him down a dirt road and no one could help him; 2) by repeatedly swearing at him and accusing him of breaking into your residence; 3) by repeatedly punching him; and, 4) by pressing your foot into his throat/chest, contrary to and in violation of section 36(1)(b) of the Code. This constitutes a breach of the Code under section 35(a) of the Code.

Count 2 – Discreditable Conduct

On or about the 22nd day of September, 2010, at or near the City of Saint John in the County of Saint John and Province of New Brunswick, while on duty, you acted in a manner that is likely to bring the reputation of the Saint John Police Force into disrepute by: 1) by making a statement to Randy King to the effect that King was lucky that you couldn't take him down a dirt road and no one could help him; 2) by repeatedly swearing at Randy King and accusing him of breaking into your residence; 3) by repeatedly punching Randy King; and, 4) by pressing your foot into the throat/chest of Randy King, all of which conduct related to a break-in at your residence and with respect to which you should have recused yourself due to conflict of interest, contrary to and in violation of section 36(1)(a)(ii) of the Code. This constitutes a breach of the Code under section 35(a) of the Code.

Count 3 – Abuse of Authority

On or about the 22nd day of September, 2010, at or near the City of Saint John in the County of Saint John and Province of New Brunswick, you used unnecessary force on Randy King, by repeatedly punching him, contrary to and in violation of section 41(b) of the Code. This constitutes a breach of the Code under section 35(f) of the Code.

Count 4 – Abuse of Authority

On or about the 22nd day of September, 2010, at or near the City of Saint John in the County of Saint John and Province of New Brunswick, you used unnecessary force on Randy King, by pressing your foot into the throat/chest of Randy King, contrary to and in violation of section 41(b) of the Code. This constitutes a breach of the Code under section 35(f) of the Code.

Count 5 – Conviction of Offence

On August 15, 2012 you were convicted of the included offence of common assault contrary to section 266(a) of the *Criminal Code of Canada* pursuant to a charge that: on or about the 22nd day of September A.D. 2010 at or near the City of Saint John in the County of Saint John and Province of New Brunswick, you did in committing an assault upon Randy King, causing bodily harm to him, by punching him, thereby committing an indictable offence, contrary to section 267(b) of the *Criminal Code of Canada* and amendments thereto.

This conviction renders you unfit to perform your duties and/or is likely to bring the reputation of the Saint John Police Force into disrepute and constitutes a breach of the Code under sections 35(j) and 45 of the Code.

Full details of the above particulars are set forth in the investigation report that is served herewith.

3. APPOINTMENT OF ARBITRATOR

Pursuant to section 9(2)(b) of the *Code of Professional Conduct Regulation*, if the parties fail to appoint an arbitrator within 10 days after I serve you with this Notice of Arbitration Hearing, the New Brunswick Police Commission shall appoint an arbitrator;

4. CONSEQUENCES OF FAILURE TO ATTEND ARBITRATION HEARING

Pursuant to section 9(2)(c) of the *Code of Professional Conduct Regulation*, if after being duly notified, you do not attend at the arbitration hearing, the arbitrator may proceed in your absence and you are not entitled to notice of any further proceedings.

5. COPIES OF DOCUMENTS

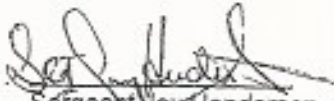
Pursuant to section 9(1)(a) of the *Code of Professional Conduct Regulation*, I am providing you with copies of the following documents. There were no physical objects removed.

- (a) a true copy of the investigative report
- (b) a true copy of all statements taken during the course of the investigation
- (c) a true copy of the documents removed
- (d) a list of the physical objects removed, and
- (e) a summary of the investigator's findings and conclusions

Dated at Saint John, New Brunswick the 7th day of February 2013.


W.G. Reid
Chief of Police

Notice served:


Sergeant Jay Henderson
Professional Standards

2013-02-11 →
Date/time

Served
12:05 hrs.
55PA Building
on Chas to the St.