SUPREME COURT OF NOVA SCOTIA
Citation: Ranni v. Halifax (Regional Municipality),2011 NSSC 83

Date: 20110307
Docket: Hfx. No. 332069
Registry: Halifax

Between:

Donald Ranni

Applicant

-and-

Halifax Regional Municipality and **Nova Scotia Police Review Board**

Respondents

Decision

Judge: The Honourable Justice Robert W. Wright

Heard: February 16, 2011 at Halifax, Nova Scotia

Written Decision: March 7, 2011

Counsel:
The Applicant - Donald Ranni, personally
Counsel for the Respondent (HRM) - Karen MacDonald
Counsel for the Respondent (Nova Scotia Police Review Board) - Duane Eddy (watching brief)

Wright, J.

INTRODUCTION

[1] The applicant Donald Ranni has applied for judicial review of a decision made by the Nova Scotia Police Review Board (the "Board") released on May 28, 2010. That decision affirmed a disciplinary decision made by Deputy Chief Tony Burbridge of Halifax Regional Police ("HRP") dated September 9, 2008 to dismiss Mr. Ranni from his employment as a police officer as a result of three disciplinary defaults Mr. Ranni had committed between November 12, 2007 and December 9, 2007.

[2] The particulars of those disciplinary defaults were recited in the Board's decision as follows:

Count #1 - On or about the 12th day of November, 2007, as a result of a motor vehicle accident, Cst. Ranni was charged with impaired driving.

Count #2 - On or about the 9th day of December 2007 at approximately 0630 hrs., while off-duty, Cst. Ranni attended his ex-girlfriend's residence and began banging on doors to get her attention. This resulted in other tenants requesting police attendance for a suspicious person complaint.

Count #3- On or about the 29th day of November 2007, Cst. Ranni failed to appear in Supreme Court (Family Division) for a pre-trial conference after being with a subpoena.

[3] Mr. Ranni did not contest any of these findings of disciplinary default in the hearing before the Board. Indeed, he acknowledged the truth of the facts of the underlying incidents contained in the investigation reports prepared by the

assigned investigating officers, which were entered in evidence. Rather, Mr. Ranni contested the penalty of dismissal imposed upon him by Deputy Chief Burbridge. He maintained before the Board that he should be reinstated to his employment as a police officer subject to whatever conditions the Board felt to be appropriate. In the final analysis, the Board did not agree with that submission, deciding as it did that dismissal was the most appropriate disposition.

[4] Mr. Ranni, earnestly wishing to resume his career as a police officer, now brings this application for judicial review on the following stated grounds:

1. That the Police Review Board erred by taking into account events which occurred after the applicant was dismissed from his employment. These events should not have been considered by the review board when making its choice of disposition for the applicant.
2. That the Police Review Board erred by failing to give appropriate weight to the applicant's employment record and evidence of past history of sexual abuse.
3. That the Police Review Board failed to consider the procedural fairness arguments advanced by the applicant at his initial hearing. Specifically the fact that the respondent spent an inordinate amount of resources and time on its investigation into the allegations that the applicant was driving while prohibited.

[5] Mr. Ranni was given liberty by the court to expand the stated ground of procedural unfairness beyond the fact specified in the third ground, to any circumstance where it might be said to have arisen before the Board.

STANDARD OF REVIEW

[6] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada revamped the standard of review analysis in administrative law and established that there are now two standards of review, namely, correctness and reasonableness.

[7] In determining the appropriate standard of review, the first step as set out in *Dunsmuir* is to examine whether existing jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded to the tribunal on the issue at hand.

[8] Here, the ultimate issue was whether the disposition of dismissal of Mr. Ranni from his employment as a police officer was the appropriate disciplinary outcome. That was a discretionary decision for the Board to make, on a trial *de novo* basis, under its statutory powers conferred by the *Police Act*. 2004, c. 31(see, in particular, ss. 80-83 under the heading "INTERNAL DISCIPLINE".

[9] Clearly (and it has not been argued otherwise), the existing jurisprudence establishes that significant deference is owed to statutory disciplinary tribunals such that discretionary decisions will attract the standard of reasonableness (see, for example, *Hills v. Provincial Dental Board of Nova Scotia* [2009] N.S.J. No. 48 (C.A.) and *Galassi v. Hamilton (City) Police Service* [2005] O.J. No. 2301. With that recognition, it is not necessary for me to look beyond the first step set out in *Dunsmuir* in the determination of the appropriate standard of review.

[10] It should be added that when it comes to issues of procedural fairness, the

reviewing court does not conduct a standard of review analysis at all, but rather must make its own assessment of the tribunal's process (as recently affirmed by the Nova Scotia Court of Appeal in *Communications, Energy and Paperworkers Union of Canada, Local 141 v. Bowater Mersey Paper Co. Ltd.*, 2010 NSCA 19).

[11] This case turns, however, on the application of the standard of review of reasonableness of the Board's decision.

[12] The Nova Scotia Court of Appeal has had several occasions in the wake of the *Dunsmuir* decision to consider and expand on what the term "reasonableness" means. For the sake of brevity, it will be sufficient to simply quote the following salient passage from *Communications, Energy and Paperworkers Union, Local 1520 v. Maritime Paper Products Ltd.*, 2009 NSCA 60 (at paras. 35-36):

> 35. Reasonableness tracks the tribunal's reasoning, and asks whether the tribunal's finding or conclusion inhabits the set of rational outcomes. If the answer is yes, it does not matter that there may be other rational outcomes or that the judge may prefer another interpretation of "management convenience". *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, para. 59. See also: *Ryan*, para. 51, 55; *Granite*, para. 42-44; *CBRM v. CUPE*, para. 71-72.
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> 36. As stated in *Casino Nova Scotia* (above para. 23), intelligibility, justification and transparency in the first step of *Dunsmuir's* reasonableness analysis are not disguises for correctness. If those words signified correctness, there would be no point to a separate reasonableness standard. Correctness would govern every judicial review. Justices Bastarache and LeBel in *Dunsmuir* (para. 47) said that the first step relates to process, not outcome. The reviewing court asks whether it can understand how the tribunal reached its conclusion, and whether the tribunal's decision affords the raw material for the reviewing court to perform its second function of assessing whether the tribunal's conclusion occupies the range of reasonable outcomes.

[13] As further stated by the Court of Appeal in that case (at para. 24), the

reviewing judge's first task is to chart the tribunal's reasoning, which now follows.

OVERVIEW OF BOARD'S DECISION

[14] At the outset of its decision, the Board recognized that the hearing before it was to be conducted as a trial *de novo* and that the burden of justifying the disposition of dismissal was on HRP. This was clearly decided by the Nova Scotia Court of Appeal in *Kingsbury v. Heighton*, [2003] N.S.J. No. 277.

[15] The Board then began its overview of the evidence by recounting Mr. Ranni's career as a police officer which spanned two brief initial periods of employment in Kensington, P.E.I. and Bridgewater, N.S. before he joined HRP in February, 2006. The Board noted from his various Officer Performance File Reports that Mr. Ranni had performed his duties as a police officer very well, up until the incidents in November and December of 2007 which constituted the subject disciplinary defaults.

[16] In its reflections on Mr. Ranni's personal background, the Board made early reference (and indeed throughout its decision) to the sexual abuse that he suffered as a child perpetrated by a relative. Mr. Ranni had never received any counselling for this abuse and had blocked it out of his mind for almost 20 years. It resurfaced in his mind with flashbacks after he had been assigned to the Major Crime Unit where he took on the responsibility of registering sexual offenders. Unfortunately, Mr. Ranni resorted to the heavy consumption of alcohol as a coping mechanism.

[17] This ultimately led to the first disciplinary default when Mr. Ranni was

found to be operating a motor vehicle while severely intoxicated on November 12, 2007 putting both himself and the public in danger. Mr. Ranni was charged with impaired driving to which he plead guilty in January, 2008. At his sentencing on May 22, 2008 he was given a conditional discharge and prohibited from driving for a period of one year.

[18] It was only about a month later when the second incident occurred where Mr. Ranni created a disturbance at the residence of his ex-girlfriend in the early morning hours which resulted in the police being called. In respect to both this incident and the impaired driving incident, Mr. Ranni initially gave explanations to his fellow police officers which were not true. He has since admitted the truth of the investigative reports that followed which lead to the disciplinary action taken by HRP.

[19] The Board then recounted the efforts which Mr. Ranni has since made to right himself. Following the events of November and December, 2007, Mr. Ranni successfully completed a treatment program for alcohol addiction and also began regularly seeing a registered clinical psychologist, Mark Russell, primarily for psychotherapy in relation to the issues which had lead to his impaired driving incident.

[20] In its review of post December, 2007 events, the Board then made reference to the evidence which established that during the period of suspension of his driving privileges, Mr. Ranni had operated a motor vehicle on a number of occasions. He was apprehended while doing so in Sydney on April 16, 2009 as a

result of which he was charged with driving while disqualified (a case that is still outstanding). However, Mr. Ranni himself acknowledged in his testimony before the Board that during his suspension, he had driven to his home in Sydney from Bedford on more than one occasion, had driven to work a few times, and had also driven his vehicle to visit his daughter. This admission played a significant part in the Board's ultimate decision, as will be reviewed later in this decision.

[21] The Board then engaged in its analysis of the appropriate disposition to be made, relying on the *Legal Aspects of Policing* publication authored by Paul Ceyssens. In that publication, the author sets out five foundation principles which should be considered when arriving at an appropriate disposition where police misconduct is proved, all of which were adopted by the Board. They are as follows:

1. Compliance with purposes of the police discipline process (having regard to the employer's interest in maintaining discipline, the public interest and the rights of the member officer);
2. Corrective dispositions should prevail where possible (i.e., a corrective disposition should take precedence over a punitive disposition, where possible);
3. Presumption of the lowest disposition (i.e., the officer is entitled to the most favourable disposition in the circumstances of the case, where possible);
4. Proportionality (i.e., any punishment imposed must be proportionate to the offence with due regard to the special considerations applicable to the service in the police force and requiring consideration of all applicable mitigating and aggravating factors);

5. A higher standard is applicable to the constabulary (i.e., a higher standard of behaviour is expected compared to other members of the public).

[22] The Board then went on to adopt and consider a list of mitigating and aggravating factors which are identified in the Ceyssens' publication. In each instance, the Board recited the applicable evidence in its balancing of aggravating and mitigating factors.

[23] In the course of its analysis, the Board identified three main aggravating factors present in this case. The first was the negative effect of Mr. Ranni's conduct from the public interest viewpoint. The Board concluded that his actions, particularly with respect to counts one and two, violated the public trust and raised questions about his honesty and integrity. In the Board's view, that factor indicated that a serious sanction should be imposed.

[24] The second aggravating factor identified was the seriousness of the misconduct which the Board recognized as a fundamental consideration, at least in respect of Counts 1 and 2. The Board did not attach much significance to Count #3 where it said it may be prepared to accept Mr. Ranni's evidence that he made an honest mistake in failing to attend court on November 29, 2009 pursuant to a subpoena. However, the Board was extremely troubled and disapproving of Mr. Ranni's conduct with respect to the other two incidents above described which it considered to be a strong aggravating factor.

[25] The third aggravating factor noted was the publicity effect and the damage to

the reputation of the police force. The Board, again relying on Ceyssens, interpreted "damage" to include both that resulting from the original misconduct as well as damage that would occur to the reputation of the police force if the officer were to remain a member. The Board expressed particular concern over the latter, given that Mr. Ranni's impaired driving incident of November 12, 2007 received considerable publicity. The Board expressed further concern that reinstating Mr. Ranni would risk the loss of public confidence in the police force, having himself violated the law.

[26] Another factor considered by the Board was the degree of Mr. Ranni's remorse in recognition of the seriousness of his misconduct. The Board here acknowledged the specific evidence that was introduced to support Mr. Ranni's claim that he was genuinely remorseful for his actions. While the Board accepted that evidence as indicia of remorse, it nonetheless was not convinced that Mr. Ranni was fully remorseful for his actions where his testimony suggested that he did not fully accept responsibility and where he suggested that others were at least partially to blame for his own misconduct. The Board therefore appeared to have mixed views about the weight to be given to this factor.

[27] There were also a number of mitigating factors identified and considered by the Board. First and foremost was Mr. Ranni's personal history and circumstances of sexual abuse he had endured as a child. The Board recounted the evidence of how his memories of that former abuse resurfaced after he was assigned responsibility for registering sexual offenders in the Major Crime Unit and how his life then started to spiral out of control with resulting alcoholism. Once he

realized he needed professional help to cope with these issues, Mr. Ranni began seeing a psychologist, Mark Russell, who in turn referred him to an alcohol treatment program which he successfully completed. The Board expressly accepted Mr. Russell's explanation that these psychological factors, while not the direct cause of Mr. Ranni's actions, certainly impacted upon his commission of the subject disciplinary defaults. The Board accordingly recognized this as a significant mitigating factor.

[28] In further examining this factor, the Board also considered Mr. Ranni's potential for reform and rehabilitation. On balance, the Board concluded, in light of Mr. Russell's evidence, that Mr. Ranni had a reasonable chance to be rehabilitated to the point he would be able to return to police duties, should he follow through with certain recommendations. Although the Board considered this to be a mitigating factor, it also expressed the reservation that Mr. Ranni had not yet adequately addressed all of his underlying issues stemming from his former abuse.

[29] Other mitigating factors acknowledged by the Board were Mr. Ranni's positive employment history in his relatively short career as a police officer and the financial hardship which his dismissal imposed on his family and himself.

[30] In the course of its analysis of such factors, the Board also gave consideration to the principles of specific and general deterrence, and achieving consistency of the disposition with other cases. Indeed, the Board reviewed three Ontario cases which it considered to be the most relevant amongst the various

authorities presented to it. It also recognized the difficulty in finding a case factually similar to the present one, given its uniqueness.

[31] After reviewing all of the foregoing factors, the Board then identified the test to be applied in determining whether the disposition of dismissal was the appropriate outcome, namely, whether HRP had discharged the burden of establishing that Mr. Ranni was not fit or suitable to remain a police officer in light of his past conduct, the surrounding circumstances, and his prospects for rehabilitation.

[32] The conclusion of the Board was that HRP had met its burden of justifying that a dismissal was the most appropriate disposition for Mr. Ranni, despite the mitigating factors identified earlier. The Board stated its opinion that there were simply too many negative incidents involving Mr. Ranni in too short a time which raised serious concerns about his character and his ongoing suitability to be a police officer. While the Board acknowledged that Mr. Ranni may have the potential to address his underlying issues which precipitated his misconduct, it concluded that even if those issues are adequately addressed, Mr. Ranni does not have the characteristics necessary to be a police officer.

[33] Reading between the lines which follow in its decision, the Board intimates that it might well have favourably considered a reinstatement of Mr. Ranni on a conditional basis had the only negative incidents been the impaired driving charge and causing a disturbance, embodied in Counts 1 and 2. From my reading of the Board’s decision, the tipping point that led to the disposition of dismissal was the

subsequent incidents of driving while disqualified, which Mr. Ranni admitted to as earlier recited. The Board did not accept Mr. Ranni's explanation that he had lost his job and had to drive out of necessity. Rather, it regarded this conduct as exhibiting a disrespect for the law and a failure to recognize his own culpability for his situation. The demonstration of such an attitude, said the Board, was completely antithetical to being a police officer.

[34] The Board went on to say that where Mr. Ranni had not abided by the court imposed condition prohibiting him from driving for a year, it could not have any confidence that if reinstated to HRP on a conditional basis, he would abide by those conditions. The Board also reiterated its concern over what message would be sent to the general public if Mr. Ranni were to be reinstated with that history.

[35] In the end, the Board treated Mr. Ranni's failure to abide by the one year driving suspension, as part of his conditional discharge for the impaired driving offence, as a forfeiture of any opportunity to be given a third chance by the Board. The Board therefore "regrettably" concluded that a dismissal of Mr. Ranni was the most appropriate disposition.

GROUNDS FOR JUDICIAL REVIEW

[36] There are two main thrusts to Mr. Ranni's case for judicial review. The first is the contention that the Board improperly took into consideration the post-dismissal incidents of driving while disqualified when making its decision on disposition. His second main contention is that the Board failed to give appropriate weight both to his otherwise positive employment record and the evidence of past history of sexual abuse as an underlying factor, and which he has

since overcome with the benefit of counselling and treatment.

[37] As to the third ground for judicial review, I interject here that there is nothing in the record before me that would validate any allegation of procedural unfairness in the process before the Board at any stage of the proceeding.

[38] The propriety of a tribunal's consideration of post-dismissal conduct when deciding dispositions of disciplinary cases was dealt with by the Supreme Court of Canada in *Toronto Board of Education v. Ontario Secondary School Teachers' Federation, District 15* [1997] S.C.J. No. 27. In that case, the Board of Education discharged a teacher for reasons of unprofessional conduct, poor judgment, and attitudes which indicated he was no longer capable of fulfilling his duties as a teacher. Before the hearing of a grievance arbitration was held, the teacher wrote a third abusive letter to the Board containing threats to the lives of its members and others, the first two of which had led to his dismissal. The third letter was in evidence before the arbitration board but the majority did not even refer to it in deciding to quash the dismissal and order the teacher's conditional reinstatement. The letter was plainly relevant in determining whether there was a basis for the inference drawn by the majority of the arbitration board that the teacher's conduct was temporary.

[39] The Supreme Court of Canada ruled that even though the third letter was written after the dismissal of the teacher, such evidence can properly be considered

if it helps to shed light on the reasonableness and appropriateness of the dismissal. The court went on to say that it would not only have been reasonable for the arbitrators to consider the third letter, it was a serious error for them not to do so. The court concluded that in the face of that letter, it was patently unreasonable (being the former standard of review there being applied) for the arbitrators to conclude that the teacher's conduct was temporary and to return him to the classroom.

[40] In the present case, the Board properly identified the test to be applied as being whether HRP had established that Mr. Ranni was not fit or suitable to remain a police officer in light of his past conduct, the surrounding circumstances, and his prospects for rehabilitation. In the application of that test, and given the ruling of the Supreme Court of Canada in the *Toronto Board of Education* case, I find that it was reasonable for the Board to have considered Mr. Ranni's post-dismissal conduct of driving while disqualified and drawing the inferences which it did.

[41] I will further address in this decision some of the corollary arguments Mr. Ranni has made with respect to the Board's use of the evidence pertaining to his post-dismissal conduct of driving while disqualified.

[42] Mr. Ranni complains that the Board should not have accepted or relied on the evidence of Sgt. Ronald Legere, the sole witness called by HRP, who was the arresting officer on the driving while disqualified charge of April 16, 2009. Mr.

Ranni's argument, as I understand it, is that Sgt. Legere's testimony relating to his opinion that Mr. Ranni was attempting to evade him in a parking lot just prior to the arrest was misleading and contrary to evidence he later gave in the same matter in September, 2010.

[43] It is first to be noted that this discord in Sgt. Legere's testimony is a bare assertion in Mr. Ranni's brief ,without any evidence being filed in support of it. Even if such a discord does exist, however, Mr. Ranni himself admitted in his testimony before the Board that he had driven his vehicle while disqualified from doing so, as earlier recited. Sgt. Legere's testimony on the circumstances of the arrest is therefore not critical to the Board's finding. Neither is it a critical factor that no finding of guilt of that charge has yet been made in Provincial Court. It was entirely reasonable for the Board to consider this post-dismissal conduct, by Mr. Ranni's own admission, in deciding whether he was suitable to remain a police officer.

[44] Mr. Ranni further submits that it was unreasonable for the Board to hold him to the standards of a police officer in assessing his post-dismissal conduct. I find no merit in that argument. Again, what the Board had to decide was whether or not Mr . Ranni was suitable to remain as a police officer and his post-dismissal conduct was examined from that perspective.

[45] Mr. Ranni also raises an innuendo of bias in asserting that the Board based its decision on their members' personal opinions of dislike for Mr. Ranni and his explanations. That is not a proper characterization of the Board's approach. To

reiterate once again, what the Board was deciding was whether Mr. Ranni was suitable to remain a police officer in light of his past conduct, the surrounding circumstances, and his prospect for rehabilitation. There is nothing in the record that substantiates any indication of bias or reasonable apprehension of bias on the part of the Board.

[46] In his oral submissions, Mr. Ranni stressed that it was unreasonable for the Board to impose the most severe form of penalty, namely, his dismissal in light of all the mitigating factors that were expressly recognized. He emphasized that his disciplinary defaults during the months of November and December of 2007 were triggered by memories of his past sexual abuse as a child which resurfaced after his assignment to the Major Crime Unit for registering sexual offenders. He acknowledged that he made wrong choices in trying to cope with those memories by turning to alcohol but that he was able to turn his life around with the benefit of psychotherapy from Mr. Russell and the completion of a treatment program from which he was released with a good prognosis. He described that period as an isolated time in his life and maintains that the Board failed to give appropriate weight to the evidence of his past history of sexual abuse and its effects on his behaviour.

[47] It is clear from reading the decision of the Board that it gave considerable attention to Mr. Ranni's past history of sexual abuse and its effects. Indeed, the Board expressly commended him for his efforts to seek counselling for that

experience as well as his problems with alcohol abuse. I think it is fair to say that these extenuating circumstances caused the Board to grapple with its decision which was ten months in the making.

[48] Some of the language in its decision bears this out. For example, the Board said that answering the question of the appropriate disposition was far from easy and that it regrettably concluded that dismissal was the most appropriate disposition. The Board further commented that it did not arrive at that conclusion lightly or without sympathy for Mr. Ranni's former abuse. The Board added in its concluding paragraph that taking away Mr. Ranni's career was not a decision that the Board came to lightly, or one that it took any pleasure in. However, in the final analysis, it concluded that Mr. Ranni's own actions left it with no reasonable alternative.

[49] It is not the function of this court to retry the case. It is immaterial whether this court, in the first instance, would have reached the same disposition on its own weighing of the evidence. Rather, the standard of judicial review is that of the reasonableness of the Board's decision, both in terms of its process and its inhabitation within the range of acceptable outcomes.

CONCLUSION

[50] On a careful examination of the Board's decision, I conclude that its path of reasoning in reaching the disposition of dismissal was intelligible, justified, and transparent so as to satisfy the first step of the *Dunmuir* reasonableness analysis. I

further conclude that severe as it may be, the disposition of dismissal is embraced by the set of rational outcomes that were open to the Board, which satisfies the second step of the *Dunsmuir* analysis. It follows that this court cannot interfere with the Board's decision and this judicial review application is accordingly dismissed.

J.