

ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

IN THE MATTER OF an application under section 116 of the
Police Services Act R.S.O. 1990, c. P.15 as amended

JOHN M. CHAMBERS

Applicant

CHATHAM-KENT POLICE SERVICES BOARD

Respondent

Presiding Members:

Murray W. Chitra, Chair
Noëlle Caloren, Member

Appearances:

David S. Thompson, Counsel for the Applicant
Glenn P. Christie, Counsel for the Respondent

Hearing Date: October 15, 2007

This is an application by John Chambers pursuant to section 116 of the Police Services Act R.S.O. 1990, c. P.15 as amended (the "Act") to determine his status as a member of the Chatham-Kent Police Service.

Background:

John Chambers began his career as a police officer in 1973. He eventually became Chief of the Tilbury Police Service.

In September of 1998 the Tilbury Police Service amalgamated with a number of other police forces to form the Chatham-Kent Police Service (the "Service").

John Chambers was appointed Staff Inspector with the Service. Two years later he was appointed Deputy Chief by the Chatham-Kent Police Services Board (the "Board").

The terms and conditions of John Chambers' employment as Deputy Chief were contained in a contract with the Board dated December 1, 2000. It had no fixed term.

The agreement was modified by letter on November 19, 2001 to reflect an increase in salary and benefits.

On September 18, 2002 the Board and John Chambers entered into a new contract. That agreement provided for a three year fixed term running from January 1, 2003 to December 31, 2005.

As well, it contained a termination provision. The relevant section read:

6.01 The Deputy Chief's appointment will terminate upon the happening of any of the following events ...

b) automatically on the expiration of this Agreement, December 31, 2005, except that the term may be extended by mutual agreement. In the event an extension is considered, the Deputy Chief will be notified before September 30, 2005 and discussions will commence immediately following such notice;

The contract was not extended beyond its expiry date of December 31, 2005.

Mr. Chambers challenged the authority of the Board to terminate his appointment. He brought an application before the Ontario Superior Court of Justice arguing that Article 6.01(b) was in effect a form of dismissal not authorized under the Act. As well, he asserted that the short duration of the contract undermined the independence necessary for the office of deputy chief and was therefore void on public policy grounds.

On May 15, 2006 Mr. Justice Edward R. Browne of the Ontario Superior Court of Justice ruled that Article 6.01(b) was void and unenforceable. This decision was appealed to the Court of Appeal for Ontario.

On June 5, 2007 the Court of Appeal concluded that Article 6.01(b) was not void and set aside the decision of Mr. Justice Browne. On the question of remedy, at paragraphs 34 to 36 of its judgment the Court stated:

As previously noted, Mr. Chambers asked in the alternative for a declaration that he continues to hold office as a police officer and member of the Chatham-Kent Police Service ...

Section 116(1) of the *Police Services Act* provides:

116(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.

Since s. 116(1) provides that the Commission is empowered to decide that question, there is no purpose in remitting this matter to the Superior Court for a new hearing on that issue.

As a result, this question is now before us.

Applicant's Position:

Mr. Thompson, on behalf of the Applicant, argued that the termination of Mr. Chambers' appointment as Deputy Chief did not result in the loss of his status as a police officer and member of the Service.

Mr. Thompson's principle point was that the Board had no authority to terminate Mr. Chambers (or any police officer) except as provided in the Act. He submitted that under the Act a police officers' employment can only be terminated in the following circumstances:

- i) for offences against the Code of Conduct, pursuant to section 68;
- ii) for unsatisfactory work performance, pursuant to sections 64 and 65;
- iii) by reason of mental or physical disability, pursuant to section 47;
- iv) as a result of an investigation and inquiry under section 25; or,
- v) to abolish a police service or reduce its size, pursuant to section 40.

Mr. Thompson argued that none of these statutory preconditions to the termination of Mr. Chambers' employment existed.

In addition, Mr. Thompson submitted that Mr. Chambers holds the public office of constable and enjoys all of the common law rights and obligations of that position. He argued that these rights and obligations cannot be bargained away. One such right is not to be terminated except as provided by the Act.

Mr. Thompson also argued that there has been no hearing or other due process resulting in a decision to terminate Mr. Chambers' employment as a police officer. Nor has Mr. Chambers been demoted in rank in accordance with the procedures set out in Part V of the Act.

In support of these arguments Mr. Thompson cited: Re A Reference Under the Constitutional Questions Act (1957), O.R. 28 (Ont. C.A.), Re Sinkovick and Board of Commissioners of Police of Town of Strathroy et al. (1989), 65 O.R. (2d) 292 (Div. Ct.), Re Brown and Waterloo Regional Board of Commissioners of Police (1985), 50 O.R. (2d) 395 (Div. Ct.) and Re City of Pembroke Police Services Board and Kidder (1995), 22 O.R. (3d) 663 (Div. Ct.).

As well, he tendered a copy of a letter from the President of the Chatham-Kent Senior Officers Association dated November 1, 2007 indicating that the Association would be pleased to have John Chambers as a member "should he resume his previous rank as Staff Inspector". He also provided us with a copy of the current collective agreement between the Board and Association.

In conclusion, he submitted that we should find that Mr. Chambers is, and has been since January 1, 2006, a member of either the Chatham-Kent Police Senior Officers Association or the Chatham-Kent Police Association.

Respondent's Position:

On behalf of the Respondent, Mr. Christie submitted that Mr. Chambers' employment as a police officer terminated when his contract concluded. The expiry of that agreement, he says, severed any relationship Mr. Chambers had with the Board.

Mr. Christie argued that rank and office are inextricably bound. He pointed out that under the Act "police officer" is a generic term that includes individuals of all ranks. As such, the status of "police officer" and "deputy chief" do not separately and independently give rise to membership in a police service.

Mr. Christie took us through the history of Mr. Chambers' contract negotiations with the Board. Initially Mr. Chambers resisted inclusion of a termination date. His first agreement contained no such provision. In the second contract, Mr. Chambers' salary and benefits were enhanced and the parties agreed to a fixed-term for his appointment. It clearly provided that Mr. Chambers' appointment would terminate on December 31, 2005, unless he and the Board agreed to an extension.

Mr. Christie pointed out that this agreement does not make provision for or contemplate any relationship between Mr. Chambers and the Board following its expiry. In particular, the contract does not provide a rank for Mr. Chambers to assume after December 31, 2005.

Mr. Christie noted that in 2004 the Board decided to reduce the number of administrative positions in the Service. The Board publicized this decision and its intention to reallocate the savings achieved to front line policing functions. Specifically, the Board publicized its intention to reduce the number of deputy chief positions from two to one.

Mr. Christie submitted that Mr. Chambers became aware of this decision by the Board in early 2004. Mr. Chambers wrote the Board requesting its position on a possible extension of his contract. The Board responded by advising that it had decided to allow Mr. Chambers' appointment to terminate in accordance with Article 6.01(b). Further, the Board explained that the reason it would not agree to an extension of the agreement was because it intended to reduce the number of deputy chiefs.

Finally, Mr. Christie urged that we find that section 116 of the Act does not apply to issues arising between boards and deputy chiefs of police. He submitted that section 116 is intended to deal with labour relations matters arising between police services boards and police associations and not boards and deputy chiefs.

In support of these various arguments Mr. Christie cited: Peel Regional Police Association and Peel Regional Police Services Board (January 28, 2000, O.C.C.P.S.), Niagara Regional Police Association and Niagara Regional Police Services Board (March 21, 1997, O.C.C.P.S.), Re Niagara Regional Police Services Board (Special Constable Appointments) (April 17, 1991, O.P.C.), Re Ontario Provincial Police Force and Ontario Public Service Employees Union (July, 1989, O.P.C.), Chambly (City) v. Gagnon [1999] 1 S.C.R. 8 (S.C.C.), City of Chambly v. Gagnon [1995] A.Q. No. 1196

(S.C.Q.) and Rossmo v. Vancouver (City) Police Board [2003] B.C.J. No. 2761 (B.C.C.A.).

In conclusion he asked that this application be dismissed.

Decision:

This application raises a novel issue.

The question before us is whether Mr. Chambers continues to hold the status of a member of the Service following the expiry of his contract on December 31, 2005.

The material facts in this application are not in dispute.

On November 13, 2000 Mr. Chambers was appointed Deputy Chief of the Service. Mr. Chambers' first written contract for that position was dated December 1, 2000. The Board had sought a fixed term for this agreement, but Mr. Chambers would not consent.

There was a limited termination provision. Specifically, Article 6:01 read:

6:01 The Deputy Chief's appointment will terminate upon the happening of any of the following events:

- (a) automatically upon the Deputy Chief's death;
- (b) by the Board, without notice, or pay in lieu thereof, for any conviction of offences under the Code of Conduct outlined in the Police Services Act.

The contract was subsequently amended to reflect increases in both pay and benefits.

Then, on September 18, 2002, the Board and Mr. Chambers entered into a new agreement. This contract provided for enhanced salary and benefits. As well, Mr. Chambers agreed to a fixed term. Article 2:01 read:

2:01 This contract shall be effective for the period from January 1, 2003 until the 31st day of December 2005 unless termination earlier in accordance with the provisions of this agreement.

The termination provisions of the contract were expanded from the previous agreement to include an additional subsection. Specifically, Article 6:01(b) was added to state that Mr. Chambers' appointment as Deputy Chief would expire automatically on December 31, 2005 unless "extended by mutual agreement".

The Court of Appeal upheld the validity of this provision.

The Court noted that expiry of a fixed term contract does not constitute dismissal given the decision of the Supreme Court of Canada in Chambly (City) v. Gagnon. Further, the Court stated at paragraphs 14 and 15:

... unless prohibited by statute or on public policy grounds, entering into a fixed term contract with a chief or deputy chief appears to be an appropriate mechanism for allowing a board to properly carry out its important functions.

Viewed in this context, in my opinion there was simply no evidence on the application capable of supporting the application judge's conclusion that article 6.01(b) of Mr. Chambers' contract was a colourable device to enable the Board to effect a termination of his contract contrary to the provisions of the *Police Services Act*. It is apparent from the history of Mr. Chambers' contract negotiations that the Board began seeking his agreement to a fixed term appointment from the outset. While there was some evidence that the contemplated staff changes were initiated without Mr. Chambers' knowledge or participation, these matters were properly within the purview of the Board's authority.

On the question of independence, the Court went on to note at paragraph 27 "there is no evidence that the fixed term contract operated to undermine Mr. Chambers' independence as Deputy Chief in the conduct of criminal investigations or that anyone used the fixed term as a weapon to inappropriately influence the decisions made by him."

How does this bear on the question before us?

Section 38 of the Act provides that "A municipal police force shall consist of a chief of police and such other police officers and other employees as are adequate ..."

Under section 31(1)(a) "A Board is responsible for the provision of adequate and effective police services in the municipality and shall, (a) appoint the members of the municipal police force ..."

The term "member" is defined by section 2 to mean "a police officer, and in the case of a municipal police force includes an employee who is not a police officer ..."

The Board's general duty to appoint police officers under section 31(1)(a) encompasses the authority to appoint a chief of police and deputy chiefs. This arises from two sources.

First, the term "police officer" is defined by section 2 to mean "a chief of police or any other police officer ..." This is reinforced by section 31(1)(d) which imposes a responsibility on boards to "recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account ..."

There is nothing specific in the Act to suggest that the appointment of a police officer (whether constable, deputy chief or chief) must be for life and cannot be for a fixed term; or, that an individual cannot agree to accept a time limited term. Indeed, this is the situation of many office holders including special constables, members of police

services boards, members of this Commission and as the Court of Appeal noted, deputy judges of the Small Claims Court and members of the Ontario Labour Relations Board.

This is subject to obvious caveats. First, a limited term appointment cannot be used as a colourable device to subvert the independent decision making authority of a police officer in relation to his or her statutory or common law duties relating to the maintenance of public order or the preservation of the peace. It cannot be used as a form of disguised discipline. It cannot be used as a means to reduce the size of a force so as to impair adequate and effective policing.

None of these situations apply in the case before us.

Rather, it would appear that Mr. Chambers negotiated two contracts. The first had no fixed period or limitation to the appointment beyond death or a finding of misconduct. The second contained a fixed term with the express expiration of appointment at its conclusion. Further, the latter agreement contains no provision reflecting any ongoing relationship between Mr. Chambers and the Board following its expiry.

On this point, we would note one provision of this second agreement:

7.01 It is understood that any information reasonably related to the affairs of the Municipality of Chatham-Kent or the Board received by the Deputy Chief is confidential and except as may be required by law, such information shall not be disclosed to any person, or used in any manner, without the prior written consent of the Municipality of Chatham-Kent or the Board as the case may be. This provision shall survive the termination of this Agreement.

One conclusion that can be fairly drawn from this is that if it were intended that Mr. Chambers was to return to the Service in some capacity, such a provision would not be necessary.

In any event, one would reasonably expect that if the parties intended to have a continuing relationship following the expiry of the agreement, that fact and the nature of that relationship would have been expressly so provided.

We conclude that Mr. Chambers voluntarily entered into a lawful contract with the Board in which it was agreed that his appointment would “automatically” terminate unless there was an extension. This extension did not occur.

As a result, his appointment as deputy chief and his status as police officer, ended on December 31, 2005. As of that date, he ceased to be a member of the Service.

DATED THIS 26TH DAY OF FEBRUARY, 2008.

Murray Chitra
Chair, OCCPS

Noëlle Caloren
Member, OCCPS