

OCCPS ST #08-01

JOHN M. CHAMBERS
Applicant

AND

CHATHAM-KENT POLICE SERVICES BOARD
Respondent

Presiding OCCPS Members:

Murray W. Chitra, Chair
Noëlle Caloren, Member

Appearances:

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

Heard:

October 15, 2007

Date of Decision:

February 26, 2008

MEMBER STATUS - Deputy Chiefs - Deputy Chief signing fixed term contract - Contract not renewed upon expiration - Whether Deputy Chief retained status as a police officer and member of the force - No language in contract signalling intent to maintain continuing relationship following expiry of the agreement - Appointment as Deputy Chief and status as police officer ended when contract expired - Applicant no longer a member of the service - Application dismissed.

FIXED TERM CONTRACTS - Expiration - Status of Deputy Chief upon expiration of fixed term contract - Expiration of a fixed term contract not constituting dismissal - However parties not negotiating any provision for ongoing relationship beyond term of the contract - Deputy Chief ceased to be a member of the service when fixed term contract expired - Application dismissed.

Summary of Reasons for Decision

John Chambers brought an application pursuant to s. 116 of the *Police Services Act* for determination of his status as a member of the Chatham-Kent police service. Section 116 provided that a person may apply to the Commission to hold a hearing and decide the matter if there is a dispute as to whether a person is a member of a police force or a senior officer.

Mr. Chambers became a police officer with the Tilbury police service in 1973, and eventually he became Chief. In 1998 the Tilbury service amalgamated with a number of other police forces to form the Chatham-Kent police service. In 2000 Mr. Chambers became Deputy-Chief of the Chatham-Kent service. His employment was covered by a contract which had no fixed term. In 2002 the parties entered into a new contract which had a fixed three-year term, expiring on December 31, 2005. This agreement contained a termination provision, section 6.01 which stated, at subsection (b) that the Deputy Chief's appointment would terminate automatically upon the expiration of the agreement unless "extended by mutual agreement".

The contract was not renewed when it expired. Mr. Chambers brought an application before the Ontario Superior Court of Justice, arguing that s. 6.01 (b) was a form of dismissal not authorized under the *Act*. Browne J. ruled that s. 6.01(b) was void and unenforceable. On appeal the Ontario Court of Appeal ruled the section was not void, and the judgement of Browne J. was set aside. The Court of Appeal referred to the Commission the issue of whether Mr. Chambers continued to hold office as a police officer and a member of the Chatham-Kent police service.

Before the Commission, counsel for the Applicant argued that 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. Counsel argued that termination of any police officer could only be effected under specific provisions of the *Act*, none of which had been invoked in this case. Counsel for the Respondent argued that the expiry of the agreement severed any relationship that Mr. Chambers had with the Police Services Board. Counsel pointed out that the contract did not provide a rank for Mr. Chambers to assume after December 31, 2005.

Held, Application dismissed.

In upholding the validity of s. 6.01(b), the Court of Appeal noted that expiry of a fixed term contract does not constitute dismissal, pursuant to the decision of the Supreme Court of Canada in **Chambly (City) v. Gagnon** (*infra*). Moreover, many public office holders were subject to fixed terms, so there was nothing objectionable about entering into a fixed term contract with a chief or deputy chief, unless the termination provision was used as a "colourable device".

However, in this case there was nothing to suggest that the fixed term had been used to subvert the Applicant's independent decision making authority, or as a form of disguised discipline, or as a means of reducing the size of the force.

Instead, in the most recent contract Mr. Chambers had simply agreed to a time-limited appointment. There was no provision for a continuing relationship beyond the expiry of the agreement. In addition, the presence of a non-disclosure/confidentiality clause in the agreement supported the inference that the parties did not intend Mr. Chambers to return to the service in some capacity; otherwise such a clause would not be necessary.

Accordingly, the Applicant's appointment as Deputy Chief, his status as a police officer and his status as a member of the service ended on December 31, 2005.

Statutes cited

Police Services Act R.S.O. 1990, c.P.15 as amended, ss. 2, 31(1), 38, 116

Authorities cited

Chambly (City) v. Gagnon [1999] 1 S.C.R. 8 (S.C.C.)

[Further authorities as submitted by the parties may be found at pp. 3-5 of the decision.]