

OCPC Decision # 10-01

CRYSTAL PITAWANAKWAT
Appellant

AND

WIKWEMIKONG TRIBAL POLICE SERVICE
Respondent

Presiding OCPC Members:

Dave Edwards, Member
Tammy Landau, Member

Appearances:

Richard Guy, for the Appellant
Brian T. Daly, for the Respondent

Heard:

December 21, 2009

Date of Decision:

January 6, 2010

JURISDICTION - Statutory constraints - First Nations Constable appealed finding of discreditable conduct - No-jurisdiction motion brought by Respondent - Commission derives authority to hear discipline appeals from s. 87 of *Police Services Act* - Pursuant to s. 87(1) Commission only has authority to hear appeals commenced by a police officer or a complainant - First Nations Constable not a "police officer" by virtue of definition of "police officer" in s. 2 of *Act* - Right to appeal conditional upon receipt of a notice of decision following a disciplinary hearing - Only a "police officer" subject to a hearing - Commission lacks jurisdiction to hear appeal - Motion upheld - Appeal quashed.

JURISDICTION - Statutory constraints - First Nations Constable appealed finding of discreditable conduct - No-jurisdiction motion brought by Respondent – Collective agreement between police service and association adopted discipline process in *Police Services Act* - Commission lacks jurisdiction to hear appeal since s. 2 of *Act* excludes First Nations Constable from definition of “police officer” - Commission has no inherent jurisdiction but only those powers granted to it by statute - Agreement of the parties cannot confer jurisdiction - Motion upheld - Appeal quashed.

Summary of Reasons for Decision

Constable Crystal Pitawanakwat appealed against a finding of discreditable conduct made by a Hearing Officer. The Wikwemikong Tribal Police Service brought a motion to quash the appeal on the basis that the Commission lacked jurisdiction.

Ms. Pitawanakwat was appointed a First Nations Constable on September 12, 2001 pursuant to s. 54 of the *Police Services Act*. The Board of Directors of the Tribal Police Service Board Corporation determined to provide a mechanism to deal with allegations of misconduct on the part of constables employed by the service. On April 30, 2008 the Corporation adopted the provisions of the *Act* as this mechanism, and the Tribal Officers Association agreed to the process. The parties’ agreement to use the discipline process under the *Act* became part of their collective agreement.

The Respondent asserted that the Commission lacked jurisdiction to hear the appeal since Cst. Pitawanakat was not a “police officer” within the meaning of s. 2 of the *Act*, and under s. 87 only police officers and complainants had the right to appeal disciplinary decisions.

Counsel for Cst. Pitawanakwat argued that the Commission has an inferred power to hear appeals by First Nations Constables, since the Commission has the jurisdiction to appoint and terminate First Nations Constables. Further, he submitted that the Commission had jurisdiction because in their collective agreement the service and the officers had adopted the disciplinary process set forth in the *Act*.

Held, motion granted; appeal quashed.

The Commission had no inherent jurisdiction; rather, the Commission was a creature of statute and could exercise only those powers granted to it by statute.

The Commission's authority to hear discipline appeals derived from s. 87 of the *Act*, which provides that a police officer or complainant may appeal after receiving notice of a decision following a disciplinary hearing held under enumerated sections of the *Act*. The definition of "police officer" under s.2 of the *Act* specifically excluded First Nations Constables. The Commission only had authority to hear appeals from police officers or complainants. Constable Pitawanakwat was neither. Moreover, the right to appeal was conditional upon receipt of a notice following a hearing. Since the *Act* provided that only a police officer was subject to a hearing, she could not receive notice.

Accordingly, the Commission lacked jurisdiction to hear the appeal. The parties' agreement to adopt the disciplinary process under the *Act* did not confer jurisdiction; the Commission remained a statutory body whose powers were circumscribed by statute.

Statues cited

Police Services Act, R.S.O. 1990, c.P.15 as amended, ss. 2, 54, 66(3), 68(5), 76(9), 87(1)

Authorities cited

New Brunswick (Board of Management) v. Dunsmuir
[2008] 1 S.C.R. 190 (S.C.C.), 170 L.A.C. (4th) 1, 291
D.L.R.(4th) 577