Federal Court  Cour fédérale

Date: 20100915

Docket: T-1921-09

Citation: 2010 FC 917

Toronto, Ontario, September 15, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

POLICE CONSTABLE CRYSTAL PITAWANAKWAT

Applicant

and

WIKWEMIKONG TRIBAL POLICE SERVICES

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to s. 18.1 of the *Federal Courts Act*, by a former member of the Wikwemikong Tribal Police Service (WTPS), of the decision of the WTPS that she was guilty of discreditable conduct and of the resulting decision to dismiss her from her position as a police officer.

[2] For the reasons that follow, this application is dismissed.

Background

[3] The Wikwemikong First Nation (WFN) is located in the eastern part of Manitoulin Island, Ontario. The WFN is policed by the respondent, the WTPS, a body established by the WFN to provide primary policing services throughout its territory. The services of the WTPS are provided pursuant to a tri-partite agreement, the Wikwemikong Policing Agreement, which was entered into by the WFN and the governments of Canada and Ontario. More will be said of this agreement when the issue of this Court's jurisdiction in this application is examined.

[4] The applicant, Crystal Pitawanakwat, was employed as a police officer by the WTPS and, under the Wikwemikong Policing Agreement, was appointed a First Nations Constable pursuant to section 54 of the *Police Services Act*, R.S.O. 1990, c. P-15. The relevant provisions of the *Police Services Act* are reproduced in Annex A to these Reasons.

[5] In December 2004, Police Chief Gary Reid of WTPS received information by way of a Crime Stoppers tip that the applicant was involved in using and selling cocaine. He reported that information to the Ontario Provincial Police (OPP) and asked it to investigate. Police Chief Reid received more information over time concerning the applicant, all of which he passed on to the OPP.

[6] On December 14, 2007, Police Chief Reid and Staff Sergeant DeCook of the OPP met with and interviewed the applicant regarding these allegations. Following the interview, the applicant resigned from her position with the WTPS, although she subsequently resiled from that action.

[7] On May 9, 2008, the applicant was charged by Police Chief Reid with Breach of Confidence, Neglect of Duty, and Discreditable Conduct. The Notices of Hearing provided to the applicant with respect to these charges informed her that the alleged conduct was contrary to the *Police Services Act* "as adopted by the Board of Commissioners of Police of the Wikwemikong Tribal Police Services and the Wikwemikong Tribal Officers Association."

[8] Part V of the *Police Services Act* sets out the process for the resolution of complaints regarding allegations of misconduct by the police. Although a new Part V was proclaimed in force on October 19, 2009, the process that was applied to the applicant was that under Part V as it read prior to October 19, 2009.

[9] On May 29, 2008, Police Chief Reid of the WTPS authorized Superintendent (Retired) Elbers to conduct a hearing of these charges. The authorization reads as follows:

> Pursuant to Section 76(1) of the *Police Services Act*, R.S.O. 1990 as amended, and as adopted by the Board of Police Commissioners of Wikwemikong Tribal Police Service, I hereby authorize Retired Superintendent Morris Elbers, a former member of the Ontario Provincial Police, to exercise any of the powers and perform any of the duties required to conduct a hearing pursuant to Section 64 of the *Police Services Act*.

[10] Following a hearing, on July 9, 2009, Superintendent (Retired) Elbers acquitted the applicant of the breach of confidence and neglect of duty charges, but convicted her on the discreditable conduct charge. On October 23, 2009, Superintendent (Retired) Elbers determined that the appropriate punishment for the applicant's misconduct was dismissal, and that she would be dismissed if she did not first resign. She did not resign and was subsequently dismissed by the WTPS.

[11] As a preliminary issue at the hearing the applicant had argued, as she does in this application, that the charges should be quashed because they were brought more than six months after the allegations of misconduct first came to the attention of the Chief of Police. Section 69(18) of the former *Police Services Act* provided as follows:[1]

> If six months have elapsed since the facts on which a complaint is based first came to the attention of the chief of police or board, as the case may be, no notice of hearing shall be served unless the board (in the case of a municipal police officer) or the Commissioner (in the case of a member of the Ontario Provincial Police) is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing.

[12] On January 20, 2009, Superintendent (Retired) Elbers determined that the initial information Police Chief Reid received amounted only to rumour and unsubstantiated conjecture. He held that the facts on which the complaint was based did not emerge until the applicant admitted to using cocaine during her interview on December 14, 2007. Therefore, the charges were timely and the motion to quash was dismissed.

---

[1] Subsection 83(17) of the current *Police Services Act* contains a substantially similar provision.

[13] Superintendent (Retired) Elbers reviewed the evidence and found that the applicant's evidence suffered from "several inconsistencies" and that "[s]elective memory loss also plays a card in the evidence presented by these parties [the applicant and a prosecution witness]." He noted that the applicant had admitted to cocaine usage in her interview with Police Chief Reid and Staff Sergeant Joe DeCook. He found that the testimony of "Chief Reid was forthright…and was not shaken in cross examination in relation to that interview." He then reviewed the evidence of other witnesses regarding the applicant's alleged use and trafficking of narcotics.

[14] Superintendent (Retired) Elbers found that the applicant was free to leave the December 14, 2007 interview at any time and that Police Chief Reid and Staff Sergeant Joe DeCook had informed her numerous times that she was not facing criminal charges. In her testimony at the hearing, the applicant resiled from her admission of cocaine usage and said that her only use of cocaine was inadvertent. Based on his experience in the Drug Enforcement Section of the OPP, Superintendent (Retired) Elbers challenged the applicant's credibility and refused to accept her characterization of her single cocaine usage.

[15] Superintendent (Retired) Elbers noted the testimony of two individuals, who were "not seeking any favour for their testimony," who stated that they had both bought cocaine from the applicant and had also sold cocaine to her. He noted that the applicant "in her testimony has admitted to 'hanging out' with persons involved in drugs" and stated that "[i]t certainly is apparent via her interview that she attended places and spoke to people that she should have stayed away from. She also was not forthright in her interview [on December 14, 2008]."

[16] Superintendent (Retired) Elbers rejected the applicant's submission that a "culturally sensitive" approach must be taken for the applicant, and stated that:

> The situation with officers at Wikwemikong is no different than officers that police small towns and villages. You are bound to know people. The Oath for a police officer is not a selective approach. If you desire to wear the uniform there is a higher standard of conduct that is expected of you.
>
> Constable Pitawanakwat must be reminded of her position and what the community expects of her as a police officer serving in Wikwemikong.
>
> The conduct and actions displayed by this officer is discreditable and does affect the reputation of this Service.

[17] On this basis, Superintendent (Retired) Elbers concluded that the applicant was guilty of discreditable conduct. He subsequently ruled that her misconduct was deserving of dismissal:

> In light of the seriousness of these allegations, and bearing in mind all the evidence before me, it is the decision of this Tribunal that Constable Crystal Pitawanakwat #2611 shall be dismissed from the Wikwemikong Tribal Police Service in seven days, unless she resigns before that time.

The applicant did not resign and Police Chief Reid terminated her employment.

Issues

[18] The applicant raised numerous issues in her Memorandum of Argument; however, only two were pursued at the hearing. In my assessment, this was appropriate as those two issues were the only serious issues in dispute between these parties.

[19] The Court raised with the parties the issue of jurisdiction and both parties provided the Court with helpful submissions. There are therefore three issues that require the Court's attention:

1. Whether this Court has jurisdiction to review the decision;
2. Whether the tribunal erred in determining that the Notices of Charge were properly served in accordance with the *Police Services Act*; and
3. Whether the reasons given were sufficient.

1. Jurisdiction of this Court

[20] First Nations police services are a relatively recent phenomenon and neither counsel was able to point to any authority confirming this Court's jurisdiction to hear this application. It has been observed that jurisdictional issues surrounding aboriginal policing are unsettled,[2] and First Nations police services have been described as having "a tenuous existence in law."[3]

[21] The Supreme Court of Canada in *ITO – International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, articulated the test for assumption of jurisdiction by this Court as a three-fold test.

> … [T]he essential requirements to support a finding of jurisdiction in the Federal Court […] are:
>
> 1. There must be a statutory grant of jurisdiction by the federal Parliament.

[2] Jack Woodward, *Native Law*, looseleaf (Toronto: Carswell, 1994), at 378.10.
[3] *Report on the Ipperwash Inquiry* (Ontario: Ministry of the Attorney General, 2007), at 261 of Vol. 2.

> 2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.
>
> 3. The law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the Constitution Act, 1867.

(*i) Statutory Grant of Jurisdiction*

[22] The starting point of this analysis is subsection 18.1(3) of the *Federal Courts Act* which provides the authority for judicial review and states that:

18.1(3) On an application for judicial review, the Federal Court may	18.1(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut:
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[23] Subsection 2(1) of the *Federal Courts Act* describes what constitutes a "federal board, commission or other tribunal" as follows:

"federal board, commission or other tribunal" means any body,	« office fédéral » Conseil, bureau, commission ou autre

person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the Constitution Act, 1867.	organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la Loi constitutionnelle de 1867.

[24] The question this Court must answer is whether the WTPS is a "federal board, commission or other tribunal" within the meaning of the *Federal Courts Act*.

[25] As has been noted, the WTPS was established pursuant to a tripartite agreement between the federal, provincial, and aboriginal governments. The authority for such a tripartite agreement is the First Nations Policing Policy (FNPP), which was introduced by the federal government following the Oka Crisis: Canada, Public Safety Canada: *First Nations Policing Policy* (June 1991). Tripartite agreements under the FNPP provide that 52% of the funding for Aboriginal police services will be provided by the federal government with the remaining 48% coming from the provincial government.

[26] There is ample jurisprudence from this Court that an Indian band council can be a "federal board, commission or other tribunal" for the purposes of subsection 18.1(3) of the *Federal Courts Act*: see *Canatonquin v. Gabriel*, [1980] 2 F.C. 792 (C.A.), at para. 1; *Sparvier v. Cowessess Indian Band #73*, [1994] 1 C.N.L.R. 182 (F.C.T.D.), at paras. 13-15; *Peace Hills Trust Co. v. Saulteaux First Nation*, 2005 FC 1364, at para. 59; *Vollant v. Sioui*, 2006 FC 487, at para. 25; *Devil's Gap Cottagers (1982) Ltd. v. Rat Portage Band No. 38B*, 2008 FC 812, at para. 39; *Cottrell v. Chippewas of Rama Mnjikaning First Nation Band Council*, 2009 FC 261, at para. 81.

[27] Band Council decisions have been found not to be judicially reviewable by this Court where they are of a purely private, commercial and contractual nature: *Peace Hills*; *Devil's Gap*; *Cottrell.* I am satisfied that the decision of the Wikwemikong Band Council to establish the WTPS was not one of a purely private, commercial and contractual matter. I find that the decision to have the policing of the First Nations done by First Nations Constables pursuant to the tripartite agreement was a decision having a significant public interest element. As such, I accept that the Wikwemikong Band Council, insofar as its dealing with the establishment of the WTPS is concerned, was acting as a "federal board, commission or other tribunal" within the meaning of the *Federal Courts Act*. However, it does not necessarily follow that the WTPS, in making the decision challenged in this application was also acting as a "federal board, commission or other tribunal" within the meaning of subsection 2(1) the *Federal Courts Act.*

[28] Justice Mactavish described the key principles relating to the definition in subsection 2(1) of the *Federal Courts Act* in *DRL Vacations Ltd. v. Halifax Port Authority,* 2005 FC 860. At para. 48,

she concluded that the phrase "powers conferred by or under an Act of Parliament" in that subsection "is 'particularly broad' and should be given a liberal interpretation." Her view in this regard has been cited with approval in the aboriginal context: *Devil's Gap* at para. 33.

[29] A number of cases have held that institutions or posts established by band councils by extension enjoy the same "federal board, commission or other tribunal" status as the band council itself. In *Sparvier*, Justice Rothstein concluded at para. 14 that because a band council elected pursuant to customary Indian law is a federal board, an election Appeal Tribunal elected pursuant to customary Indian law would logically also be a federal board. In *Parisier v. Ocean Man First Nation* (1996), 108 F.T.R. 297 (T.D.), the Court determined that since a band council constitutes a "federal board, commission or other tribunal," by analogy an Electoral Officer appointed by a band council shares this status. In *Okeymow v. Samson Cree Nation*, 2003 FCT 737, the Court followed the reasoning in *Parisier* and found that the chairman of the Samson Election Appeal Board was also "federal commission, board or other tribunal."

[30] Although the implementation of the First Nations police force is accomplished through the collaboration of federal, provincial, and aboriginal governments, the decision to establish a First Nations police force, as with the choice to establish the various electoral supervision institutions in the cases above, is made by the band council. Furthermore, where the duties of First Nations Constables relate to a reserve, as is the case with the WTPS, the appointment, suspension, or termination of constables requires the approval of the reserve's police governing authority or the

band council. Subsections 54(2) and (4) of the former *Police Services Act*, which provide as follows, make this clear:

> (2) If the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's police governing authority or band council.
> …
> (4) The Commissioner shall not suspend or terminate the appointment of a First Nations Constable whose specified duties relate to a reserve without first consulting with the police governing authority or band council that approved the appointment.

[31] If one applies the logic of *Sparvier*, *Parisier*, and *Okeymow*, then a First Nations police force depends on the band council for its existence, and accordingly the force is also properly characterized as a federal commission, board or other tribunal.

[32] Regardless of their origins, it is my view that First Nations police forces have a distinct federal character. Although the former Ontario *Police Services Act* provides for the appointment and termination of a First Nations Constable and subsections 54(1), (3), (5), and (6) of that Act confers on them the same powers as a police officer, subsection 2(1) of that Act makes it clear that First Nations Constables are not "police officers" within the meaning of the Act with the result that much of that legislation does not apply to them. Conversely, I note that the federal government exercises supervisory power over the First Nations Policing Program through audit activities: Canada, Public Safety and Emergency Preparedness, "Audit of the First Nations Policing Program," (Ottawa: Audit Services Canada, March 2007); see also "Follow-up Audit Management Action Plan (2007) for the First Nations Policing Program: Audit Report – June 2010." It is the federal First

Nations Policing Policy which continues to dictate the purpose, objectives, and policy principles of the First Nations Policing Program. Lastly, as has been noted, the federal government provides the majority of the funding for First Nations policing.

[33] For these reasons, I find that the WTPS is a "federal board, commission or other tribunal" within the meaning of the *Federal Courts Act* and the first branch of the *ITO* test has been met.

(ii) Existing Body of Federal Law

[34] Is there is an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction? I am of the opinion that there is.

[35] Although labour relations are generally within provincial jurisdiction, the *Canada Labour Code*, R.S., 1985, c. L-2 applies to a "federal work, undertaking or business" which includes "any work, undertaking or business that is within the legislative authority of Parliament": see sections 2 and 4. Under s. 91(24) of the *Constitution Act, 1867*, "Indians, and Lands reserved for the Indians" come within the exclusive legislative authority of Parliament.

[36] Justice Beetz, writing for the majority in *Four B Manufacturing v. United Garment Workers*, [1980] 1 S.C.R. 1031, determined that an on-reserve factory did not fall within federal jurisdiction because it was not related to "Indianness." Thus not all labour relations on Indian land falls under federal jurisdiction.

[37] However, unlike the factory in *Four B* the WTPS is related to "Indianness." The First Nations Policing Policy under which aboriginal police forces are established provides as one of its principles that:

> First Nations communities should be policed by such numbers of persons of a similar cultural and linguistic background as are necessary to ensure that police services will be effective and responsive to First Nations cultures and particular policing needs.

Furthermore, the Wikwemikong Policing Agreement establishing the WTPS provides that one of the WTPS' purposes is "to continue the provision of effective, efficient and culturally appropriate policing services in a manner consistent with and appropriate to the culture and traditions of the people of Wikwemikong throughout the Wikwemikong territory."

[38] A number of cases have confirmed that institutions with a distinct aboriginal character, like the WTPS, fall within federal jurisdiction.

[39] In *Sagkeeng Alcohol Rehab Centre Inc. v. Abraham*, [1994] 3 F.C. 449 (T.D.), Justice Rothstein determined that a rehabilitation centre dedicated to serving Indians was subject to the *Canada Labour Code*. Justice Rothstein distinguished the rehabilitation centre from the factory in *Four B* on the ground that the centre was tailored to serving Indians, and warned at para. 15 against a strict focus on the subject matter of the institution: "[t]o say that the focus of the applicant is on the treatment of alcoholism is to gloss over the way in which the applicant operates its program … The focus of the applicant is on alcohol rehabilitation of Indians and that is the function its program is

designed to perform." The same is true of the WTPS; its focus is not just policing, but rather aboriginal policing.

[40] Moreover, the Canadian Industrial Relations Board and its predecessor have found that aboriginal police forces like the WTPS fall within federal jurisdiction. In *Mohawks of the (Bay of Quinte) Tyendinaga Mohawk Territory (Re)*, [2001] 1 C.N.L.R. 176 (C.I.R.B.), the Board found that it had jurisdiction to consider a certification application from members of the Tyendinaga First Nations Police Service. The Board concluded that:

> … to characterize First Nations policing operations as similar or identical to other police operations would be to sidestep the real issue of the objective of the policing services on Indian reserves. The highlight of the program is to emphasize the perspective and values unique to First Nations peoples while ensuring the enforcement of law and order on the reserves. In light of these findings, the Board is of the view that the First Nations policing arrangement in the present case is related to "Indianness" and, accordingly, falls under Parliament's competence over Indians and Lands reserved for Indians as set out in section 91(24) of the *Constitution Act*, 1867, and further that the power to regulate the labour relations at issue forms an integral part of the primary federal jurisdiction over Indians..[4]

[41] I find therefore that there is an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.

(iii) A Law of Canada

[4] The Canada Industrial Relations Board in *Sioux Lookout Meno-Ya-Win Health Centre (Re)*, [2006] C.N.L.R. 310 (C.I.R.B.) declined to assume jurisdiction over a health centre because its primary mandate was to provide equal health services to all, but in the course of its decision at paras. 38-47 it offered useful discussion as to when an institution acquires an Indian character sufficient to bring it within federal jurisdiction.

[42] I am of the view that the laws relating to aboriginal police forces, the subject matter of this application, are "law[s] of Canada." Subsection 91(24) of the *Constitution Act, 1867* provides that matters related to "Indians, and Lands reserved for the Indians" are within federal legislative competence. It is under this head of power that Parliament passed the *Indian Act*, subsection 81(1)(c) of which permits band councils to make by-laws for the observance of law and order. It is subsection 81(1)(c) that empowers a band to establish a police force: Jack Woodward, *Native Law*, looseleaf (Toronto: Carswell, 1994), at 378.10.

[43] While not determinative, it is also relevant that First Nations appear to hold to the view (WFN certainly does in this case) that the federal and not the provincial government has jurisdiction over policing on its land. The statement of the Honourable Sidney B. Linden, Commissioner of the Ipperwash Inquiry, is instructive:

> I am aware that some First Nations and political organizations in Ontario, probably most, have concerns about the propriety of any provincial legislation with respect to First Nation policing. They believe that their treaty relationship is with the federal Crown and that federal legislation is more appropriate. These are legitimate considerations. (*Report on the Ipperwash Inquiry* (Ontario: Ministry of the Attorney General, 2007), at 262 of Vol. 2).

[44] Accordingly, I am satisfied that all three branches of the *ITO* test have been met and that the Federal Court has jurisdiction over this application.

2. Whether the Notices of Charge were served in accordance with the *Police Services Act*

[45] The applicant submits that the proceeding leading to her dismissal was a nullity as she was not served with the Notices of Charge within the six month period prescribed by subsection 69(18) of the old *Police Services Act*, reproduced above at para. 11 of these reasons.

[46] The applicant asserts that the allegations of discreditable conduct were first brought to the attention of the Chief of the WTPS on December 20, 2004, but that she was not served with the Notice of Hearing until May 9, 2008. She says that without the approval of the Commissioner of the Ontario Provincial Police to this late service, the proceeding to which she was subjected was a nullity.

[47] The immediate difficulty with this submission is that subsection 69(18) of the *Police Services Act* deals with complaints of misconduct directed to a "police officer" but "police officer" is defined in section 2 of that Act to not include a First Nations Constable, such as the applicant. Accordingly, on its face, subsection 69(18) has no application to the applicant.

[48] The applicant then points to the Tripartite Policing Agreement and the agreement of those parties which, she submits, incorporates the deadlines provided in subsection 69(18). She relies on Section 9 of the Agreement:

> 9.1 The Board shall maintain the *Wikwemikong Police Policy Procedures Manual*, which describes the policies and operational procedures of the Wikwemikong Tribal Police Service, including but not limited to a code of conduct, code of discipline and a public complaints procedure.

> 9.2 The principles reflected in the *Wikwemikong Police Policy Procedures Manual* shall be consistent with the principles set out in the Police Services Act, R.S.O. 1990 c. P-15.

[49] I find questionable the submission that the limitation period set out in subsection 69(18) is captured by the terms "code of conduct, code of discipline and a public complaints procedure" or that it is something one expects to see set out in a manual that describes the policies and operational procedures of the WTPS. In short, it is not evident to me that the limitation period would be incorporated in the WTPS manual by virtue of Section 9 of the Tripartite Agreement. It is of some note that no *Wikwemikong Police Policy Procedures Manual* was in the record before the Court; apparently none exists.

[50] Superintendent (Retired) Elbers proceeded on the assumption that the limitation period did apply to the applicant and the respondent. He was of the view that the information that Police Chief Reid received on December 14, 2007, through Crime Stoppers was "a rumour" or "innuendo" and held that the limitation period did not commence from that date. He relied on a decision of the Ontario Civilian Commission on Police Services in *Brannagan and the Peel Regional Police Service* (August 25, 2003) in which the Commission stated that "the six month period does not commence from the date of making bald and unsubstantiated allegations of wrongdoing." Rather, relying on other Commission decisions, he found that the limitation period commenced when the evidence establishes a "clear body of factual information supporting allegations of misconduct." He further held that there was only clear evidence relating to the applicant as of December 14, 2007,

when she admitted to cocaine use. Accordingly, he found that the limitation period had been respected.

[51] Despite counsel's vigorous attempt to persuade me otherwise, I find that this decision as to when the limitation period commenced to be reasonable and justified on the basis of the evidence that was before the board. In *Gough v. Peel Regional Police Service*, [2009] O.J. No. 1155, the Ontario Divisional Court held that the limitation period runs when the Chief of Police has "some evidence that misconduct may have occurred"; however, I do not read that judgment as saying that "some evidence" may be anonymous and vague allegations. The evidence that starts the clock running must be evidence that the Chief can act upon and investigate, otherwise the employer would be in an untenable position where unsubstantiated and general allegations that are incapable of independent investigation but which subsequently prove accurate, in part, result in the Chief being unable to discipline the officer. That clearly is not the intent of the legislation in providing an officer with the protection of a limitation period; rather, it is to ensure that a Chief does not sit on evidence of wrong-doing on the officer's part, holding it over his or her head like the sword of Damocles.

3. Sufficiency of Reasons

[52] The applicant submits that "the absence of reasons for rejecting the evidence of Constable Crystal Pitawanakwat and the failure of the adjudicator to delineate the onus required of the prosecution calls for the intervention on the part of [this Court]."

[53] A reading of the decision as a whole makes it clear why the adjudicator rejected the applicant's exculpatory evidence. Specifically, the following led him to this conclusion. The applicant initially denied any drug use when questioned in December 2007, but she later admitted to having tried it one time when she sprinkled cocaine onto a cigarette and "inhaled only once." The adjudicator was an experienced drug enforcement officer and he stated that he knew, based on his personal knowledge, that cocaine does not burn in its powdered form, and thus he disbelieved the applicant's evidence. He then went on to note that she later admitted to having tried it "seven or eight times." In short, her story of drug use shifted as she was pressed. In addition, the adjudicator noted that the applicant denied ever having sold cocaine; however there were two independent witnesses who testified that they had purchased cocaine from her. Although these witnesses have criminal records, the adjudicator found that they were not shaken in cross-examination and that they had nothing to gain from testifying at the hearing. In short, the adjudicator preferred their evidence to that of the applicant.

[54] The adequacy of a tribunal's reasons is to be assessed based on the purpose the reasons serve in the matter under consideration: *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.). The reasons must reflect the reasoning process of the decision-maker. Here, the decision-maker did not refer to the evidence heard over the many days of hearing that was not necessary or required. He did, however, set out under relevant headings the relevant evidence and the findings of fact on which he based his conclusions. In my view, the reasons are adequate. The reasons permit the applicant to know why her evidence was rejected and what evidence was accepted that led to the finding of discreditable conduct – namely the use and selling of illegal

drugs. Frankly, that conduct in my view necessarily leads to the conclusion that the officer had engaged in discreditable conduct. If the applicant does not understand that, then there is nothing the decision-maker could have said to make that point evident.

[55] The parties were canvassed and made submissions on costs. The respondent submitted that if successful it should be entitled to an award of $5,000. It submitted that a $3,500 award might be appropriate but for the fact that it had to engage in additional work to put before the Court the complete record below, which the applicant failed to do. There is some merit in that submission. However, in my view, an award of $4,000 inclusive of fees, disbursements and taxes, adequately addresses that concern.

JUDGMENT

THIS COURT ORDERS that:

1. This application is dismissed; and

2. The respondent is awarded its costs in the amount of $4,000.00, inclusive of fees, disbursements and taxes.

"Russel W. Zinn"
Judge

ANNEX "A"

Police Services Act, R.S.O. 1990, c. P.15	*Loi sur les Services policiers*, L.R.O. 1990, c. P.15
2. "police officer" means a chief of police or any other police officer, but does not include a special constable, a First Nations Constable, a municipal law enforcement officer or an auxiliary member of a police force; ("agent de police")	**2.** «agent de police» Un chef de police ou tout agent de police, à l'exclusion d'un agent spécial, d'un agent des premières nations, d'un agent municipal d'exécution de la loi ou d'un membre auxiliaire d'un corps de police. («police officer»)
...	…
54. (1) With the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specified duties.	**54**. (1) Le commissaire peut, avec l'approbation de la Commission, nommer des agents des premières nations pour exercer des fonctions précises.
(2) If the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's police governing authority or band council.	(2) Si les fonctions précises d'un agent des premières nations concernent une réserve au sens de la Loi sur les Indiens (Canada), la nomination exige également l'approbation de l'organe responsable de la police sur la réserve ou bien du conseil de bande.
(3) The appointment of a First Nations Constable confers on him or her the powers of a police officer for the purpose of carrying out his or her specified duties.	(3) La nomination d'un agent des premières nations confère à ce dernier les pouvoirs d'un agent de police aux fins de l'exercice de ses fonctions précises.
(4) The Commissioner shall not suspend or terminate the appointment of a First Nations Constable whose specified duties relate to a reserve without first consulting with the police governing authority or band council that approved the appointment.	(4) Le commissaire ne doit ni suspendre ni licencier un agent des premières nations dont les fonctions précises concernent une réserve sans avoir d'abord consulté l'organe responsable de la police ou le conseil de bande qui a approuvé la nomination
(5) The power to appoint a First Nations Constable includes the power to suspend or terminate the appointment, but if the Commissioner suspends or terminates an appointment, written notice shall promptly be	(5) Le pouvoir de nommer des agents des premières nations comprend celui de suspendre ceux-ci ou de mettre fin à leur mandat, mais si le commissaire suspend l'un d'entre eux ou met fin à son mandat, il en avise promptement la

given to the Commission.

(6) The Commission also has power to suspend or terminate the appointment of a First Nations Constable.

(7) Before a First Nations Constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the Commissioner or Commission, as the case may be, may determine.

(8) A person appointed to be a First Nations Constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

...

64. (1) Subject to subsections 59 (3), (4) and (5), the chief of police shall cause every complaint made about the conduct of a police officer, other than the chief of police or deputy chief of police, to be investigated and the investigation to be reported on in a written report.
…

(7) Subject to subsection (11), if, at the conclusion of the investigation and on review of the written report submitted to him or her, the chief of police is of the opinion that the police officer's conduct may constitute misconduct, as defined in section 74, or unsatisfactory work performance, he or she shall hold a hearing into the matter.
...

(10) At the conclusion of the hearing, if misconduct or unsatisfactory work performance is proved on clear and convincing evidence, the chief of police shall take any

Commission par écrit.

(6) La Commission a également le pouvoir de suspendre un agent des premières nations ou de mettre fin à son mandat.

(7) Avant qu'il ne soit mis fin à son mandat, l'agent des premières nations reçoit des renseignements suffisants sur les motifs de la cessation de son mandat ainsi que l'occasion de répondre, oralement ou par écrit, selon ce que décide le commissaire ou la Commission, selon le cas.

(8) La personne nommée agent des premières nations, avant d'assumer les fonctions de son poste, prête un serment ou fait une affirmation solennelle d'entrée en fonctions et de secret professionnel selon la formule prescrite.
…

64. (1) Sous réserve des paragraphes 59 (3), (4) et (5), le chef de police fait mener une enquête sur chaque plainte déposée au sujet de la conduite d'un agent de police autre que lui-même ou qu'un chef de police adjoint et fait en sorte que l'enquête fasse l'objet d'un rapport écrit.
…

(7) Sous réserve du paragraphe (11), si, à l'issue de l'enquête et après examen du rapport écrit qui lui est présenté, le chef de police estime que la conduite de l'agent de police peut constituer une inconduite au sens de l'article 74 ou une exécution insatisfaisante de son travail, il tient une audience sur l'affaire.

…

(10) À l'issue de l'audience, si l'inconduite ou l'exécution insatisfaisante du travail est prouvée sur la foi de preuves claires et convaincantes, le chef de police prend l'une ou

action described in section 68.
...

69. (1) A hearing held under subsection 64 (7) or 65 (9) shall be conducted in accordance with the Statutory Powers Procedure Act.
...

(18) If six months have elapsed since the facts on which a complaint is based first came to the attention of the chief of police or board, as the case may be, no notice of hearing shall be served unless the board (in the case of a municipal police officer) or the Commissioner (in the case of a member of the Ontario Provincial Police) is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing.

plusieurs des mesures énoncées à l'article 68.
…

69. (1) Une audience tenue aux termes du paragraphe 64 (7) ou 65 (9) se déroule conformément à la Loi sur l'exercice des compétences légales.
...

(18) S'il s'est écoulé six mois depuis que le chef de police ou la commission de police, selon le cas, a pris connaissance des faits sur lesquels se fonde une plainte, aucun avis d'audience n'est signifié à moins que la commission de police (dans le cas d'un agent de police municipal) ou le commissaire (dans le cas d'un membre de la Police provinciale de l'Ontario) n'estime qu'il était raisonnable, dans les circonstances, de retarder la signification de l'avis d'audience.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1921-09
STYLE OF CAUSE:	POLICE CONSTABLE CRYSTAL PITAWANAKWAT v. WIKWEMIKONG TRIBAL POLICE SERVICES
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 22, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	ZINN J.
DATED:	September 15, 2010

APPEARANCES:

Richard Guy	FOR THE APPLICANT
Brian T. Daly	FOR THE RESPONDENT

SOLICITORS OF RECORD:

RICHARD GUY PROFESSIONAL CORPORATION Barristers & Solicitors Sudbury, Ontario	FOR THE APPLICANT
MCKENZIE LAKE LAWYERS LLP Barristers & Solicitors London, Ontario	FOR THE RESPONDENT