

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁰⁵⁹⁹ OF 2008

IN THE MATTER of an Application by PAUL DEWING for Judicial Review Pursuant to Order 53 of the Grand Court Rules

AND IN THE MATTER of the POLICE LAW (2006 Revision)

BETWEEN:

PAUL DEWING

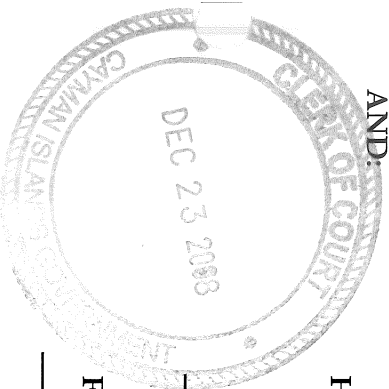


Applicant

AND:

HIS EXCELLENCY THE GOVERNOR OF THE CAYMAN ISLANDS

Respondent



NOTICE OF EX-PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

TO: The Clerk of the Court, Law Courts, George Town, Grand Cayman

1.0 The Applicant.

1.1 Paul Dewing has been a police officer for 16 years. Since 28 October 2005, Mr Dewing was engaged as a Police Constable with the Royal Cayman Islands Police Service ("RCIPS") as PC #213.

2.0 Decision in respect of which relief is sought.

2.1 Decision of His Excellency the Governor ("the Governor") in his letter dated 24 September 2008 stating:

"Having reviewed the facts of this matter, I am of the view that the non-renewal of Mr Dewing's employment with the RCIPS does not constitute a punishment imposed for an offence against discipline which would entitle him to lodge an appeal in accordance with section 56 of the Law. This appears to be a purely contractual issue relating to Mr

Dewing's possible further employment with the RCIPS rather than a disciplinary matter. The decision not to renew Mr Dewing's contract for a further fixed term was not the result of any proceedings instituted to hear any charges for an offence against discipline and as such, it falls outside the powers conferred on me under Part VI of the Law.

In light of the above, I have no jurisdiction to consider an appeal outside the statutory limit of section 56 of the Law and I am therefore unable to accede to your request to convene an appeal."

3.0 **Relief sought.**

3.1 An Order of *Certiorari* quashing the said decision of the Governor.

3.2 An Order of *Mandamus* directing the Governor to convene and consider Mr. Dewing's appeal against his discharge from service, and the purported late termination of his services citing "non-renewal of contract" as a reason.

3.3 Such further, consequential or other relief as to this Honourable Court seems just.

3.4 Costs

THE GROUNDS UPON WHICH RELIEF IS SOUGHT

4.0 **Summary of General Facts.**

4.1 The detailed facts are as set out in and verified by the First Affidavit of Paul Dewing sworn on **22** December 2008.

4.2 Mr Dewing has been a police officer for 16 years. Prior to accepting a position with the RCIPS, he was a shift supervisor in Newmarket, Suffolk, United Kingdom. Mr Dewing was engaged as a police constable with the RCIPS for an initial period of 24 months commencing 28 October 2005, with a provision for re-engagement.

4.3 Circa August 2007, Mr Dewing submitted the completed Re-engagement Form together with the medical reports requested by RCIPS Human Resources Department. After having submitted his Re-engagement Form with the necessary medical reports, Mr Dewing continued to work with the RCIPS and indeed excelled in his performance as one of five dog handlers with the K-9 Department, having got back to full active duties following serious injuries received in uniform.

4.4 Mr Dewing was advised by the RCIPS Human Resources Department that he would be re-engaged and that his contract was ready and awaiting the signature of DCP Dixon.

4.5 Between December 2006 (when he was elected as Chairman of Branch Board A of the Police Association, and Chairman of the Association legal affairs and discipline committee) and February 2008, Mr Dewing highlighted various inadequacies within the

Complaints and Discipline Department for which DCP Dixon was ultimately responsible, and represented officers under investigation.

4.6 On 7 January 2008, without any due process as prescribed in the Police Law (2006 Revision), Mr Dewing was placed on non-responsive "training duties" by Insp. Plunkett, an 'other duties' punishment under Police Law.

4.7 On 28 February 2008, at 11.00 am, Mr Dewing lodged a complaint against Insp. Plunkett and personally handed the complaint to Insp. Joseph. At 3.45 pm, Mr Dewing received a phone call from DCP Dixon's personal assistant stating that the DCP Dixon wanted to see him on Monday 3 March 2008 at 11.00 am. No update was ever received from Insp. Joseph.

4.8 On 3 March 2008, Mr Dewing met with DCP Dixon in the presence of DCP Ennis, Theresa Reeder (from HR) and another person taking minutes. DCP Dixon told Mr Dewing that he was being "immediately discharged" from service due to (i) discipline issues raised by Inspector Plunkett; and (ii) issues within the two psychiatrist's report (Mr Dewing had been requested by the RCIPS to undergo two psychiatric evaluations - both of which had revealed nothing abnormal).

4.9 Neither Insp. Plunkett's "issues raised" nor Dr. Lockhart's evaluation raised any merit for the institution of any disciplinary process against Mr Dewing.

4.10 In any event, due process as prescribed in the Police Law (Part VI - Discipline) and Standing Order A17 as well as the Public Service Management Law (2007 Revision) were flagrantly disregarded.

4.11 Before leaving the meeting, DCP Dixon handed a letter to Mr Dewing purporting to "terminate his employment with effect from 3 March 2008". The letter stated that Mr Dewing's original contract ended on 28 October 2007 and made reference to PC Dewing having been given "monthly extensions to provide him with the opportunity to complete a medical and to facilitate the completion of a psychiatric evaluation". The issues of "monthly extensions" came as news to PC Dewing, and he did complete a positive medical and psychiatric evaluation as was requested of him, but this was in January, months earlier.

4.12 Crucially, by virtue of the RCIPS' conduct between October 2007 and March 2008, PC Dewing had been re-engaged as a constable for a further period of two years commencing 28 October 2008. It was during this period of re-engagement that Mr Dewing was placed on non-responsive "training duties" by Insp. Plunkett as described in Paragraph 4.6 above.

4.13 Furthermore, under the Police Law, the Deputy Commissioner of Police has no power or authority to discharge or terminate an officer or Junior officer. Such power is vested only in the Commissioner.

4.14 DCP Dixon and the Commissioner of Police Mr Kernohan were placed on required leave sometime on or before 27 March 2008. Mr Dewing had been in constant contact with DCP Ennis in seeking a review of DCP Dixon's purported decision to discharge him from service, as suggested by Mr Ennis at the March 3rd meeting.

4.15 On 19 June 2008, on behalf of Mr Dewing, Mourant wrote to the Acting Commissioner of Police David George ("ACP George") inviting him to consider the issues raised in Mourant's letter including the fact that DCP Dixon had no power or authority to discharge PC Dewing and the fact that no disciplinary proceedings were commenced against PC Dewing under the Police Law and the Standing Order which could warrant a discharge from service.

4.16 On 23 June 2008, Mr Dewing received an email correspondence from Eric L. Bush (the Assistant Deputy Chief Secretary) stating that: "ACP George does not see sufficient grounds at this time to reverse the decision made by other officers in the RCIPS prior to his Acting appointment earlier this year".

4.17 On 27 June 2008, on behalf of Mr Dewing, Mourant wrote to the Governor lodging a written statement of intention of appeal under the Police Law and of the grounds thereof.

4.18 On 24 September 2008 the Governor wrote to Mourant stating as follows:

"Having reviewed the facts of this matter, I am of the view that the non-renewal of Mr Dewing's employment with the RCIPS does not constitute a punishment imposed for an offence against discipline which would entitle him to lodge an appeal in accordance with section 56 of the Law. This appears to be a purely contractual issue relating to Mr Dewing's possible further employment with the RCIPS rather than a disciplinary matter. The decision not to renew Mr Dewing's contract for a further fixed term was not the result of any proceedings instituted to hear any charges for an offence against discipline and as such, it falls outside the powers conferred on me under Part VI of the Law.

In light of the above, I have no jurisdiction to consider an appeal outside the statutory limit of section 56 of the Law and I am therefore unable to accede to your request to convene an appeal."

5.0 **Ground for Judicial Review**

5.1 *DCP Dixon's decision was ultra vires the Police Law and ineffective.*

(a) By virtue of the RCIPS' conduct towards Mr. Dewing between October 2007 and March 2008 Mr Dewing's contract with the RCIPS had been extended for a further period of two years or indefinitely commencing 28 October 2008.

(b) DCP Dixon did not possess any power or authority under the Police Law to discharge any officer including PC Dewing.

- (c) DCP Dixon did not possess any power or authority to terminate Mr Dewing's employment on the grounds of non-renewal *after* Mr Dewing's contract with the RCIPS had been extended for a further period of two years or indefinitely.
- (d) Section 6 of the Police Law states that: "the Commissioner shall not delegate his power to impose upon a police officer any punishment which includes reduction in rank or dismissal".
- (e) Section 54 (3) of the Police Law states that: "A commanding officer shall have the power to impose [only] the following punishments on any junior officer - (a) reprimand; (b) extra guards, fatigues or other duties; and (c) a fine not exceeding five days' pay".
- (f) Section 54 (2) of the Police Law states that: "the Commissioner shall have the power to impose any one or more of the following punishments ... (f) discharge, i.e. immediate termination of service and of membership of the force; and (g) dismissal... "
- (g) It is clear from the Police Law, especially from Section 6 that only the Commissioner has the power to discharge an officer (or junior officer) and therefore DCP Dixon did not have any authority or power to discharge Mr Dewing from service. DCP Dixon's decision is clearly *ultra vires* the Police Law and is therefore ineffective.

5.2 *PC Dewing's discharge was made without due process and in breach of the Police Law, Standing Order A17 and basic principles of natural justice.*

- (a) The right to be heard, the right to be accorded procedural fairness and the rule against bias are basic principles of natural justice which are entrenched in administrative law binding on all decision makers in public service.
- (b) The Police Law and Standing Order A17, which contains the complaints and discipline procedures of the RCIPS, recognises these basic principles of natural justice and in fact makes it mandatory for due process to be followed before any disciplinary decision is taken affecting an officer (or junior officer).
- (c) No disciplinary proceedings were formally commenced against PC Dewing leading up to his discharge.
- (d) PC Dewing was not even given any formal notice of any allegations made against him or of disciplinary proceedings initiated against him.
- (e) DCP Dixon's decision to discharge PC Dewing was exercised in breach of all due process prescribed by the Police Law and Standing Order A17.
- (f) DCP Dixon's decision to discharge PC Dewing was utterly arbitrary and unreasonable.

- 5.2 *DCP Dixon had a bias against PC Dewing*
- (a) In the light of all the complaints and issues PC Dewing had raised concerning various inadequacies within the Complaints and Discipline Department, for which DCP Dixon was ultimately responsible, DCP Dixon had a bias against PC Dewing and should have excused himself from being on any tribunal making a decision on PC Dewing's future with the RCIPS.
- 5.4 *ACP George had failed to exercise his power to review PC Dewing's discharge.*
- (a) Section 55 of the Police Law provides that the Commissioner shall have the power to review all disciplinary proceedings, findings and punishment. ACP George is vested with the power to quash DCP Dixon's findings and Mr Dewing's discharge.
- (b) ACP George, failing to appreciate the extent of his powers, took the view that he needed to "see sufficient grounds to reverse the decision made by other officers in the RCIPS prior to his Acting appointment".
- (c) It is immaterial whether the decision to discharge Mr Dewing was made prior to ACP George's appointment or after. The Police Law does not distinguish between the previous Commissioner and the current one.
- (d) ACP George failed to even consider Mr Dewing's application for a review under the Police Law despite DCP Dixon's lack of authority to discharge Mr Dewing and the absence of due process required under the Police Law.
- 5.5 *ACP George's refusal to review PC Dewing's discharge is an abdication of his statutory responsibility.*
- (a) ACP George is vested with all the powers of the Commissioner. He is the only officer in the RCIPS vested with the relevant powers under the Police Law to whom Mr Dewing's complaints can lawfully be brought to for review. No one else in the RCIPS can exercise this power.
- (b) By the abdication of his statutory responsibility, ACP George has condoned the decision of DCP Dixon which was made *ultra vires* the Police Law and in blatant disregard for the requisite due process prescribed by the Police Law and Standing Order A17.
- 5.6 *The decision of the Governor to decline to convene or consider an appeal under the Police Law is irrational and unreasonable on the ground that the Governor failed to consider or to give sufficient weight to a number of considerations brought to his attention, namely:*
- (a) That Mr Dewing's contract with the RCIPS had been extended for a further period of two years or indefinitely commencing 28 October 2007 by virtue of

the RICPS' conduct towards Mr Dewing between October 2007 and March 2008.

- (b) That the "non-renewal of contract" ground of termination acted by DCP Dixon was a sham, which was superseded by the oral notice of "immediate discharge from service" given to Mr Dewing by DCP Dixon on 3 March 2008.
- (c) That the "non-renewal of contract" ground of termination was a sham, which was purportedly exercised by DCP Dixon after PC Dewing's contract with the RCIPS had been extended for a further two years or indefinitely commencing 28 October 2007.
- (d) That there were no "monthly extensions" given to Mr Dewing as alleged by DCP Dixon.
- (e) That DCP Dixon did not possess the requisite authority or power under the Police Law to terminate Mr Dewing's employment on any grounds whatsoever.
- (f) That DCP Dixon was driven by an ulterior motive or was biased against Mr Dewing and that DCP Dixon should not have been a part of any decision-making concerning Mr Dewing's continued employment with the RCIPS.

Dated this 23rd day of December 2008

Mourant

Mourant du Feu & Jeune
Attorneys-at-Law for the Applicant

NOTE: Pursuant to Order 53 rule 3(3) unless the Judge is of the opinion that leave may be granted without the need to hear from Counsel on behalf of the Applicant, an oral hearing is requested before this application for leave to apply for Judicial Review is considered and determined by this Honourable Court.

This EX PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW was issued by Mourant du Feu & Jeune, Attorneys-at-Law for the Applicant whose address for service is 3rd Floor, Harbour Centre, PO Box 1348, George Town, Grand Cayman