LERA#369

Suit No: CI
(Winnipeg Centre)

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	
	)	For the Applicant:
A. A. ,	)	P.R. McKenna
	)	
Applicant,	)	For the Respondents
	)	Norm Ralph & Law
-and-	)	Enforcement Review
	)	Agency:
	)	N.D. Shende, Q.C.
F. R. , N. R. , LAW	)	
ENFORCEMENT REVIEW AGENCY	)	
AND HIS HONOUR JUDGE M. RUSEN,	)	Judgment Delivered:
	)	November 13, 1996
Respondents.	)	

MACINNES, J.

This is an application under *The Law Enforcement Review Act* R.S.M. 1987, c. L75 ("the Act"). The principal issue for determination is the meaning of the words "criminal charge" in s. 6(7) of the *Act*.

On July 24, 1994, the applicant issued a provincial offence notice to the respondent, F. R. ("R. "), charging him with a breach of s. 204(1) of *The Highway Traffic Act* and in particular s. 21.4 of Manitoba Vehicle Safety Inspection Regulation 75/94 pertaining to tread width of tires. The charge was tried in Provincial Traffic Court on January 16, 1995. The applicant testified as

a witness in that proceeding. R. represented himself. On January 17, 1995 R. filed a complaint against the applicant under the *Act* alleging conduct of the applicant toward R. amounting to a disciplinary default as defined under s. 29 of the *Act*.

Accompanying R. 's complaint was a letter dated January 17, 1995 to the Commissioner, which stated:

> "The reason for not filing my complaint before today was because I wanted to proceed through the courts with a guilty plea.
>
> The first open court date for me was Monday, January 16, 1995. I then contacted you Tuesday, January 17, 1995."

Section 6(1) of the *Act* permits anyone who feels aggrieved by a disciplinary default allegedly committed by any member of a police department, to file a complaint under the *Act*. Section 6(3) requires that the complaint be submitted to the Commissioner (or to certain other persons) not later than thirty days after the date of the alleged disciplinary default. That time requirement may be extended under certain circumstances, one of which is set forth in s. 6(7) of the *Act* which provides as follows:

> "6(7) Where an alleged disciplinary default occurs in the course of an investigation, arrest or other action by a member which results in a criminal charge against the complainant, the Commissioner may extend the time for filing the complaint to a date not later than one year after the date of the alleged disciplinary default or thirty days after the final disposition of the criminal charge, whichever is the sooner."

The Commissioner relied upon s. 6(7) of the *Act* and extended the time for filing R. 's complaint.

The applicant thereupon initiated these proceedings, seeking various relief which would effectively terminate and/or prohibit the processing and/or hearing of R. 's complaint.

It is common ground that but for s. 6(7) of the *Act*, R. would be unable to file or proceed with his complaint, thirty days having long since elapsed between the date of the alleged disciplinary default and the filing of the complaint.

In my opinion, the law is clear that limitation or time provisions of the kind set forth in s. 6(3) of the *Act* are mandatory and that particularly where, as here, the private rights of the applicant are involved, compliance is a necessary statutory prerequisite to jurisdiction: See *Re Vialoux v. Registered Psychiatric Nurses Association of Manitoba* (1983) 23 Man.R. 310 (Man.C.A.) and *Newton v. Tataryn,* unreported M.J. 209 - April 20, 1990 (Man.Q.B.). However, unlike the factual circumstances in *Vialoux and Newton,* here s. 6(7) does provide statutory authorization for the extension of time if that subsection applies.

For s. 6(7) to apply, the alleged disciplinary default must occur in the course of an investigation etc. which results in a criminal charge against the complainant. Applicant's counsel argues that in the circumstances of this case s. 6(7) does not apply. He says that the charge in question being one under *The*

Highway Traffic Act is not a "criminal charge" within the meaning of this subsection. He asserts that to be a criminal charge, the charge must relate to an offence under federal legislation, the authority for criminal law having been reserved by constitution to the federal government alone. He argues that a charge under provincial legislation, including in particular *The Highway Traffic Act,* is not criminal but regulatory in nature and in support of that position relies upon *Re O'Grady v. Sparling* (1960) 33 W.W.R. 360, a decision of the Supreme Court of Canada.

While *Re O'Grady* remains good law and binding upon this court, it pertains, in my view, to a different issue or proposition than that now before me.

There is ample authority for interpreting the phrase "criminal charge" as being in contradistinction to "civil" and as meaning a proceeding not civil in its character. There are many instances where charges under provincial legislation have been held to be "criminal". See *R. v. Nat Bell Liquors Ltd.* (1922) 2 A.C. 128,; *Mitchel v. Tracey* (1918) 58 S.C.R. 640; *In Re McNutt* (1912) 47 S.C.R. 259 and others. In the text Criminal Law, Second Edition by Mewett and Manning, the following appears at pp. 7 and 8:

> "By s. 92 of the British North America Act, 1867, the provinces are given power to legislate over particularly defined areas, and this excludes criminal law which, by s. 91, is reserved for the federal government. However, cl. 15 enables a province to legislate on the subject of the imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to

> any matter coming within any of the classes of subjects enumerated in s. 92...
>
> Clearly, therefore, there can be provincial legislation that makes it an offence to do certain acts. This is quite valid so long as the enactment is made in relation to a matter that otherwise comes within one of the subjects enumerated in s. 92. In other words, the validity of provincial criminal law must depend upon the reason for the legislation being something other than merely declaring certain acts to be criminal. If this were not so, many of the provincial laws would be unenforceable. For example, it is useless prohibiting speeding on a highway, or the selling of liquor to minors, unless some sanction could be imposed for breach of such provisions.
>
> Thus, in addition to the federal criminal law, there is a large body of provincial criminal law...."

I do not, therefore, accept applicant's argument that the phrase "criminal charge" found in s. 6(7) of the *Act* necessarily pertains only to offences under federal legislation.

Applicant's counsel argues as well, that had offences under *The Highway Traffic Act* been intended for inclusion in s. 6(7) of the *Act,* the legislature would not have used simply the phrase "criminal charge" but would have used an expanded phrase such as it did in s. 5(1)(a) of *The Crown Attorneys Act* R.S.M. 1987 c. C330, where Crown Attorneys are authorized to "institute and conduct...prosecutions for criminal and penal offences..."

In addition, applicant's counsel refers to other sections of the *Act* and in particular s. 12(9) which reads:

> "12(9) Where the respondent's Chief of Police informs the Commissioner that the respondent's conduct is being or will be investigated by the internal investigation unit of the department for the possible laying of criminal charges against the respondent, the Commissioner may request the Chief of Police to forward the results of the investigation to the Commissioner for purposes of this Act."

He argues that the phrase "criminal charges" in s. 12(9) of the *Act* clearly means charges under the *Criminal Code* or other federal legislation, an interpretation which was agreed with by respondent's counsel, and that the same phrase should have the same meaning within and throughout the same statute. Accordingly, if "criminal charges" in s. 12(9) means charges under the *Criminal Code* or other federal legislation, so too must the same phrase in s. 6(7).

Lastly, and alternatively, applicant's counsel argues that it could not have been intended by the legislature to provide an extension of time for the filing of a complaint which would affect the private rights of a police officer, in this case the applicant, in circumstances where the result of the investigation, arrest or other action by the applicant was something as miniscule as the issuing of a provincial offence notice pertaining to the tread width of tires on a vehicle. He asserts that the balancing of public concern as compared with the private rights of the member necessitate the strict observance of the thirty day time limit under the *Act*.

While there is a presumption or rule both as to drafting and interpretation of legislation that the same words or phrase should have the same meaning, in every part of a statute, it is not a presumption or rule of great weight. More than anything, a word or phrase must be interpreted within the context in which it is used. There are many examples where the same word or phrase may be given different meanings in the same statute, and even within the same section. See *Re Canadian Pacific Railway Co. and Rural Municipality of Lac Pelletier* (1944) 3 W.W.R. 637, (Sask.C.A.).

In my opinion, the essence of the *Act* is to permit anyone who feels aggrieved by the conduct (amounting to a "disciplinary default") of a police officer to make complaint about that to an independent body. This applies where the conduct occurred in the course of involvement with a police officer, in his or her capacity as a police officer, under any circumstances, that is, it is not restricted to actions of a police officer relating only to matters which might come within the confines of the *Criminal Code* or other federal legislation. Accordingly, I am of the view that in the context of the *Act* the words "criminal charge" in s. 6(7) of the *Act* mean proceedings other than civil which upon conviction would give rise to penal consequences. The charge in question is such a charge. Section 6(7) clearly affords the Commissioner the jurisdiction to use his discretion to extend the time for filing R. 's complaint as he did in this case.

Having carefully considered the applicant's position, I conclude that his application must fail and I therefore dismiss it without costs.

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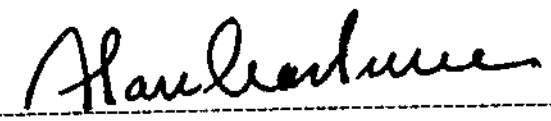
I exercise my discretion to award no costs as the application clearly raised an arguable issue by reason of the language of the *Act*. My review of the *Act* in connection with this application has made me aware of a lack of clarity and consistency within the legislation not just with respect to the phrase "criminal charge" but elsewhere, and I suggest that the *Act* could usefully be referred to legislative counsel for review and revision.



J.

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