

IN THE MATTER OF A DUTY OF FAIR REPRESENTATION
ARBITRATION PURSUANT TO *THE POLICE SERVICES ACT*, R.S.O. 1990

BETWEEN

JEFFREY EMMONS
(the "Complainant")

AND

THE BRANTFORD POLICE ASSOCIATION
(the "Association")

ARBITRATOR

Diane Brownlee

APPEARANCES

FOR THE COMPLAINANT

Jeff Emmons, Complainant

FOR THE ASSOCIATION

Caroline (Nini) Jones, Counsel

Written submissions received on April 13, 14, 15, 16, 20, 21 and 22, 2020

INTERIM AWARD No. 2

[1] On November 13, 2019, I was appointed pursuant to Section 124 (3) of the *Police Services Act*, R.S.O. 1990 to hear and determine the complaint of Mr. Jeffrey Emmons (the "Complainant"), who alleges that the Brantford Police Association (the "Association") has breached its duty of fair representation (the "DFR Complaint"). There are no procedures under the *Police Services Act* for addressing a DFR Complaint.

[2] A hearing was scheduled for January 24, 2020. Prior to the hearing, I received approximately twenty-four pages of correspondence from the parties, about numerous procedural issues that they had been unable to resolve between them. I was unable to address the parties' requests for pre-hearing Orders in light of the fact that the parameters of the dispute had not been particularized. Accordingly, I directed the parties to attend the January 24, 2020 hearing prepared to stipulate the material facts they were relying upon and to bring the documents that they were relying on in support of the material facts.

[3] On January 24, 2020, I convened the first day of hearing, which was used to particularize the DFR Complaint and the Association's response, and for the parties to explain the documents that they intend to rely upon and have admitted as evidence. This enabled me to address the parties' numerous requests for procedural Orders.

[4] On January 30, 2020, approximately one week after the January 24, 2020 hearing, the Complainant requested additional Orders. On January 30, February 28 and March 1, 2020, I received written submissions from the parties pertaining to the Complainant's requests for additional Orders.

[5] On April 13, 2020, I issued an Interim Award (Interim Award No. 1) that addresses the following procedural issues:

- a) Recording of proceedings
- b) Abuse of process
- c) Production of documents

- d) Issuance of summonses to witness
- e) Character of a party pursuant to Section 8 of the SPPA
- f) Hearing open to the public pursuant to Section 9 of SPPA
- g) Hearing process and admission of evidence

[6] Later that same day, April 13, 2020, the Complainant informed me that he intended to request a reconsideration of some of the Orders that I had issued, and to request new Orders.

[7] On April 13, 14, 15, 16, 20 and 21, 2020 the Complainant sent me what totalled thirty-nine pages of emails and attachments in which he made three requests, that:

- 1) I reconsider some of the Orders issued in Interim Award No. 1;
- 2) I recuse myself based on a reasonable apprehension of bias; and
- 3) I adjourn the hearing scheduled for May 22, 2020.

[8] Given that the May 22, 2020 hearing date is approaching, I am addressing in this Award only the Complainant's third request, that the May 22, 2020 hearing date be adjourned. In support of his request for an adjournment, the Complainant has stated that:

- a) He intends to file a complaint with the Ontario Police Arbitration Commission.
- b) He intends to commence a judicial review of Interim Award No. 1.
- c) He intends to file with the local Justice of the Peace a "private information" with respect to "fraud and utter forged document".
- d) He alleges that the conduct of the Brantford Police Association, which is the basis of his DFR Complaint, amounts to "numerous criminal offences".
- e) He contends that my failure to find, in Interim Award No. 1, that there was an abuse of process at the January 24, 2020 hearing is "aiding and abetting" the Brantford Police Association's "criminal activity".
- f) He contends that his participation in the upcoming May 22, 2020 hearing would amount to "aiding in criminal activity".

- g) He submitted that he cannot participate in the May 22, 2020 hearing until he is granted permission and/or immunity by the Solicitor General.
- h) He stated that he has written to the Solicitor General to request permission.
- i) He also requested that the May 22, 2020 hearing be adjourned due to the ongoing Covid-19 pandemic.

[9] The Association opposes the Complainant's request for an adjournment of the hearing scheduled for May 22, 2020. The Association noted that no criminal charges have been laid regarding the Complainant's allegations of criminal activity. The Association submitted that the possibility that some other legal process may occur in the future is not a basis to adjourn the scheduled hearing of this matter. With respect to the pandemic restrictions, the Association requested that the May 22, 2020 hearing be held by videoconference on the Zoom platform.

Decision

[10] It is clear to me that it would not be productive to over-rule the Complainant's request for an adjournment, and order him to proceed on May 22, 2020 against his wishes, for the following reasons.

[11] Although some progress was made at the January 24, 2020 hearing with respect to particularizing the DFR Complaint and identifying procedural issues, no agreement could be reached on how these procedural issues should be resolved. Moreover, within a week after the hearing on January 24, 2020, the Complainant requested more Orders, including his request that I find that the Association had abused the hearing process and that the Association's character was an issue in this hearing. Accordingly, on April 13, 2020 I issued my Interim Award No. 1, that contains my Orders regarding all of the procedural issues.

[12] In response to this, on the evening of April 13, 2020, and on the subsequent dates of April 14, 15, 16, 20 and 21, 2020, the Complainant sent me thirty-nine pages of

submissions, and made requests that I reconsider some of my Orders, that I recuse myself and that I adjourn the hearing scheduled for May 22, 2020.

[13] In light of the numerous issues and grounds raised by the Complainant in support of his request for an adjournment, as set out in Paragraph 8 (a) through (i), above, it is clear to me that it would not be productive to over-rule the Complainant's request for an adjournment, and to order him to proceed on May 22, 2020 against his wishes.

[14] I am therefore granting the Complainant's request for an adjournment of May 22, 2020. This matter is adjourned *sine die*.

Dated this 5th day of May, 2020



Diane Brownlee, Sole Arbitrator