Citation: *R. v. Lawrence & Kent*, 2006NLTD159
Date: 20061024
Docket: 2006 01T 1532

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:
NATALIE ANNE LAWRENCE
AND JOHN DANIEL KENT **APPLICANTS**
AND:
HER MAJESTY THE QUEEN **RESPONDENT**

Trial:	St. John's, Newfoundland and Labrador
Hearing:	October 16 & 17, 2006
Decision:	October 24, 2006
Judge:	The Honourable Mr. Justice Raymond J. Halley

FACTS: The Applicants are police officers who have been charged with assault and illegal confinement of a husband and wife. The alleged incident took place on November 14, 2002 but they were not charged with the offences until nearly three years later.

ISSUE: Did the nature, extent and untimeliness of the police investigation amount to an "abuse of process" which was so prejudicial that there should be a judicial "stay" of proceedings?

HELD: The police investigation was unacceptably prolonged, incompetent and amounted to a dereliction of duty. Although the investigation was an "abuse of process", it is necessary to defer a decision on the " stay" until the conclusion of the case for the Crown in order to determine the extent of the prejudice in the circumstances of this case.

Counsel:	Nicholas J. G.Avis, Q.C. for Natalie Anne Lawrence David C. Day, Q.C. for John Daniel Kent Kathleen M. Healey for the Respondent

DECISION OF HALLEY, J.

1. APPLICATION

[1] The Applicants are charged with criminal offences which arose out of an incident which took place in the execution of their duties as police officers.

[2] On October 14, 2005 Natalie Anne Lawrence was charged with assaulting Sharon Pottle and Boyd Pottle (contrary to section 265 of the **Criminal Code of Canada)** and illegally confining the Pottles and Michelle Groves (contrary to section 279(2) of the **Code**). John Daniel Kent was also charged with assaulting and illegally confining the Pottles.

[3] Lawrence became a member of the Royal Canadian Mounted Police ("RCMP") on November 5, 2001. She began her police career as a constable in Bay Roberts in the Trinity-Conception District which is part of the "B" Division (Newfoundland and Labrador) of the RCMP. After graduation from Memorial University of Newfoundland in 1995, Kent taught in secondary schools in this province for four years. He was "badged" as an RCMP constable on May 1, 2000. He was also assigned for duty in Bay Roberts.

[4] The Applicants have applied for a judicial stay of proceedings ("stay") under section 24(1) of the **Canadian Charter of Rights and Freedoms** ("**Charter**") on the basis that the conduct of the police investigation amounted to an "abuse of process" which was so prejudicial that it violated their sections 7 and 11(d) **Charter** rights.

2. BACKGROUND

[5] Just after 9:00 p.m. on November 14, 2002 Corey Pottle ("Corey") and Michelle Groves ("Groves") were driving through the community of Salmon Cove on their way to Corey's house in Job's Cove. Corey was nineteen years old and was driving a vehicle that was neither licenced nor insured. In addition, he was under a court prohibition from having any contact with Groves who was his girlfriend.

[6] Lawrence saw Corey fixing his windshield wiper and made a determination that the vehicle licence had expired. She then signalled for Corey to pull over to the side of the road. As Lawrence approached the vehicle, Corey sped away in an attempt to avoid any legal consequences. Lawrence immediately pursued the vehicle. The "chase" took place at high rates of speed through several small communities over a

distance of forty kilometres. Eventually, Corey stopped his vehicle outside the house of Boyd and Sharon Pottle ("Pottles") who were Corey's parents.

[7] Corey and Groves immediately ran into the house. Corey told his parents that the police were chasing him, however, he refused to tell them the reason for the pursuit. The Pottles saw the patrol car of Lawrence. They also saw Kent's patrol car arriving shortly afterwards. The Pottles attempted to persuade Corey to go out outside and speak to the police officers.

[8] Eventually, the four occupants left the house. First it was Sharon, followed by Boyd, Corey and then Groves. Lawrence and Kent had their firearms drawn and they handcuffed and detained all four of them. The Applicants made a determination that Corey and Groves were the occupants of the "chase" vehicle. They were taken to the Harbour Grace detachment and detained for the evening. The Pottles were released at the scene and returned to their house.

[9] Corey was charged with dangerous driving, flight from a police officer and a breach of recognizance.. He pleaded guilty and was sentenced to a term of

imprisonment of twenty-one days. Groves was not charged with any criminal offence and she was released on the morning of November 15, 2002.

[10] Several other police officers "patrolled" to the scene during the incident. Constable Pierre Legresley was the senior officer. The Pottles complained to him about the conduct of the Applicants. They advised him that they had been handcuffed and detained at gunpoint for "no apparent reason".

3. INVESTIGATION

[11] Staff Sergeant John Bishop was the RCMP Commander for the District of Trinity-Conception. When he came upon the scene of the incident and was advised of the Pottles' complaint, he instructed Legresley to interview them and record the necessary details.

[12] Bishop spoke to the Pottles by telephone a few days later and unsuccessfully attempted to resolve the matter. On December 11, 2002 the Pottles met with Bishop at Harbour Grace at which time they completed the formal RCMP Public Complaint

Forms. On December 12, 2002 the Complaint Form was sent to the RCMP Internal Services division ("Internal Services") which was located in St. John's.

[13] Although it should have been immediately obvious that the Pottles' allegations dealt with the criminal offences of assault and illegal confinement, it took Internal Services a period of six months to act on the matter. Finally, in May of 2003 the criminal investigation of the Applicants was assigned to Sergeant Eugene Taylor who was an investigator with Internal Services. Although he worked in St. John's, Taylor lived in South River which was approximately twenty kilometres from Harbour Grace.

[14] Taylor started from "scratch" because there was no file on the complaint. He interviewed Corey (50 minutes) and Groves (36 minutes) on June 24, 2003. On June 29, 2003 Taylor interviewed Boyd Pottle (41 minutes) and Sharon Pottle (47 minutes). On September 16, 2003 he obtained a statement from Kent and on September 24, 2003 he took photographs of the Pottle house in Job's Cove.

[15] After September of 2003 the investigation "stalled". It was not until April of 2004 that Taylor obtained a statement from Lawrence. On June 15, 2004 Taylor

interviewed all of the RCMP officers (except Constable Stefan Thoms) who were at the scene of the incident on November 14, 2002. He did not interview Thoms until February 9, 2005.

[16] Taylor testified at the preliminary inquiry of Lawrence on February 28, 2006. The following was his testimony in relation to the time that he had concluded that criminal charges should be laid against the Applicants:

> **"Q. Sg. Taylor, when you swore out the Information in this matter, you swore that you had a belief that a crime has occurred here. Do you, in fact, have a belief that a criminal offence has occurred in the matter before the Court?**
> **A. Yes.**
> **Q. When did you first formulate that belief?**
> **A. After gathering all the evidence.**
> **Q. And when was that?**
> **A. Exact date, I can't tell you but after the completion of all the evidence, and sitting down and going through all the facts that I had. I would say around the beginning of the 2005/2004.**
> **Q. So you see, you said the beginning of 2005 meaning late 2004?**
> **A. Yes.**
> **Q. Early 2005?**
> **A. Yes. About that."**

[17] Taylor submitted his investigative report to his superiors on March 16, 2005. The Applicants were finally charged (on separate Informations) on October 14, 2005.

[18] Upon the completion of her preliminary inquiry on February 28, 2006, Lawrence was committed to stand trial in this Court with a judge and jury. Prior to

the commencement of Kent's preliminary inquiry, the Crown "preferred" an Indictment jointly charging the Applicants with two counts of assault and unlawful confinement of the Pottles. Lawrence was also charged with a separate count of unlawful confinement in relation to Groves. On April 18, 2006 the Applicants were arraigned on the Indictment and pleaded "not guilty" to all charges.

4. ABUSE OF PROCESS

[19] The Applicants argue that their rights under sections 7 and 11(d) of the **Charter** have been infringed because of the pre-charge delay. They allege that the police investigation amounted to an "abuse of process" which either prejudiced their right to a fair trial or was so unfair that it shook the public's confidence in the judicial process ("fair play").

[20] Section 7 of the **Charter** states that:

> **"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".**

[21] Section 11(d) of the **Charter** provides that:

> **"Any person charged with an offence has the right**

.....

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal".

[22] The Applicants argue that the police investigation resulted in lost evidence because there was evidence that was "never acquired in the first place" (as opposed to evidence that was destroyed, misplaced or lost). They also argue that the memories of the witnesses have "faded" because of the time it took to complete the investigation.

[23] The leading case on pre-charge delay is the Supreme Court of Canada case of **R.** v. **L. (W.K.)**, [1991] 1 S.C.R. 298. The criminal charge in that case was "preferred" nearly thirty years after the alleged offence. The Court held that pre-charge delay alone is not sufficient to justify a stay of proceedings. Stevenson, J. (at paras. 21-24) stated the following:

> **"Delay in charging and prosecuting an individual cannot, without more, justify staying the proceedings as an abuse of process at common law. In *R. v. Rourke*, [1978] 1 S.C.R. 1021, 38 C.R.N.S. 268, [1977] 5 W.W.R. 487, 35 C.C.C. (2d) 129, 76 D.L.R. (3d) 193, 16 N.R. 181, Laskin, C.J.C. (with whom the majority agreed on this point, stated that (at pp. 1040-41):**
>
> > **Absent any contention that the delay in apprehending the accused had some ulterior purpose, courts are in no position to tell the police that they did not proceed expeditiously enough with their investigation, and then impose a sanction of a stay when prosecution is initiated. The time lapse between the commission of the offence and the laying of a charge following apprehension of an accused cannot be monitored by Courts by fitting**

> **investigations into a standard mould or moulds. Witnesses and evidence may disappear in the short run as well as in the long, and the accused may too have to be sought for a long period or short period of time. Subject to such controls as are prescribed in the Criminal Code, prosecutions initiated a lengthy period after the alleged commission of an offence must be left to take their course and be dealt with by the Court on the evidence, which judges are entitled to weigh for cogency as well as credibility. The Court can call for an explanation of an untoward delay in prosecution and may be in a position, accordingly, to assess the weight of some of the evidence.**

Does the Charter now insulate accused persons from prosecution solely on the basis of the time that has passed between the commission of the offence and the laying of the charge? In my view, it does not.

Staying proceedings based on the mere passage of time would be the equivalent of imposing a judicially created limitation period for a criminal offence. In Canada, except in rare circumstances, there are no limitation periods in criminal law. The comments of Laskin J. in *Rourke* are equally applicable under the Charter.

Sections 7 and 11(d) of the Charter protect among other things, an individual's right to a fair trial. The fairness of a trial is not, however, automatically undermined by even a lengthy pre-charge delay. Indeed, a delay may operate to the advantage of the accused, since Crown witnesses may forget or disappear. The comments of Lamer J. (as he then was) in *R. v. Mills*, supra, at p. 945, are apposite:

> **Pre-charge delay is relevant under ss. 7 and 11(d) because it is not the length of the delay which matters but rather the effect of that delay upon the fairness of the trial.**

Courts cannot, therefore, assess the fairness of a particular trial without considering the particular circumstances of the case. An accused's rights are not infringed solely because a lengthy delay is apparent on the face of the indictment".

[24] Although a pre-charge delay by itself will not support a "stay", an "abuse of process" which results in prejudice may give rise to a judicial stay of proceedings.

That issue was considered by the Supreme Court of Canada in **R.** v. **Regan**, [2002] 1 S.C.R. 297. At pages 325 - 327, LeBel J., stated the following:

> **"In the *Charter* era, the seminal discussion of abuse of process is found in *R. v. O'Connor*, [1995] 4 S.C.R. 411. The doctrine of abuse of process had been traditionally concerned with protecting society's interest in a fair process. However, in *O'Connor*, L'Heureux-Dube, J., writing for a unanimous Court on this issue (Lamer C.J. and Sopinka and Major JJ dissenting on the application of law to the facts), subsumed the common law doctrine abuse of process into the principles of the *Charter* in the following terms, at para. 63:**
>
> > **It seems to me that conducting a prosecution in a manner that contravenes the community's basic sense of decency and fair play and thereby calls into question the integrity of the system is also an affront of constitutional magnitude to the rights of the individual accused.**
>
> **L'Heureux-Dube J. also acknowledged the existence of a residual category of abuse of process in which the individual's right to a fair trial is not implicated. She described this category, which is invoked in the present appeal, as follows in *O'Connor*, at para. 73:**
>
> > **This residual category does not relate to conduct affecting the fairness of the trial or impairing other procedural rights enumerated in the *Charter*, but instead addresses the panoply of diverse and sometimes unforeseeable circumstances in which a prosecution is conducted in such a manner as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process.**
>
> **L'Heureux-Dube, J. thus held that now, when the courts are asked to consider whether the judicial process has been abused, the analysis under the common law and the *Charter* will dovetail (see *O'Connor*, at para. 71). In this manner, while it acknowledged that the focus of the *Charter* had traditionally been the protection of individual right, the *O'Connor* decision reflected and accommodated the earlier concepts of abuse of process, described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667). In an earlier judgment, McLachlin J. (as she then was) expressed it this way:**

> ...abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice. I add that I would read these criteria cumulatively
>
> (*R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007)

Under the *Charter*, the violation of specific fair trial rights may also constitute an abuse of process, as will a breach of the more general right to fundamental justice (see *O'Connor*, at para. 73).

Finally, this Court's most recent consideration of the concept of abuse of process arose in the administrative context. In *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44, it was held that a 30-month delay in processing a sexual harassment complaint through the British Columbia human rights system was not an abuse of process causing unfairness to the alleged harasser. For the majority, Bastarache J. came to this decision on the basis that abuse of process has a necessary causal element: the abuse "must have caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (para. 133). In Blencoe's case, it was held that the humiliation, job loss and clinical depression which he suffered did not flow primarily from the delay, but from the complaint itself, and the publicity surrounding it (*Blencoe*, at para. 133; see also *United States of America v. Cobb*, [2001] 1 S.C.R. 587, 2001 SCC 19).

A stay of proceedings is only one remedy to an abuse of process, but the most drastic one: "that ultimate remedy", as this Court in *Tobiass, supra*, at para. 86, called it. It is ultimate in the sense that it is final. Charges that are stayed may never be prosecuted; an alleged victim will never get his or her day in court; society will never have the matter resolved by a trier of fact. For these reasons, a stay is reserved for only those cases of abuse where a very high threshold is met: "the threshold for obtaining a stay of proceedings remains, under the *Charter* as under the common law doctrine of abuse of process, the 'clearest of cases'" (*O'Connor, supra*, at para. 68).

[25] In determining whether the police investigation of Lawrence and Kent was an "abuse of process", I have considered the following factors:

1. The allegations against Lawrence and Kent involved serious criminal charges which took place while they were engaged in the discharge of their duties as law enforcement officers.
2. It was urgent that the RCMP commence the investigation immediately and conclude it as soon as possible in order to either confirm or dispel the "troubling" allegations.
3. Although the Applicants were under criminal investigation, they were still permitted to go about their regular policing duties in the District of Trinity-Conception (where the Pottles, their relatives and friends lived) for a period of nearly three years.
4. The criminal investigation did not commence until six months after the initial complaint.
5. The complaint of the Pottles was treated with indifference by the RCMP. There was no sense of urgency or any real interest on the part of the RCMP to deal with the matter on a priority basis or in a timely manner.
6. Although the investigation took over two years to complete, it was neither a competent nor a comprehensive investigation. There were no

diagrams made of the scene and there were no measurements taken of the area around the Pottles' house. There was no floor plan prepared of the house and no photographs were taken inside the residence. In addition, there was no attempt to determine the lighting or weather conditions that existed at the time of the incident.

7. Although witnesses stated that there were a number of civilians present at the scene, there was no attempt to identify and interview those witnesses.

8. Even though the investigation "dragged out", the investigator failed to ask for help in order to complete the investigation in a timely fashion.

9. By June of 2004, Kent had become concerned about the length of time the investigation was taking. His lawyer wrote Internal Services on June 2, 2004. The letter stated the following:

> **"This investigation is in relation to a complaint filed on December 2, 2002, nineteen months ago, as of today's date. My client committed no wrong doing but has had this hanging over his head for a time period beyond reason. Please confirm in writing at your earliest opportunity that the file is closed and the complaint dismissed".**

10. The lawyer did not receive a substantive answer to his June letter and he wrote similar letters on October 19th and December 14, 2004 urging the RCMP to complete the investigation.

11. In February of 2005, Kent contacted Staff Sergeant Roy Hill who was the Staff Relations Representative of "B" Division. He asked Hill to "pressure" the RCMP to complete the investigation.

12. On March 11, 2005 Hill wrote the head of the Internal Services to complain about the time it was taking to complete the investigation. He stated that:

> **"...what has taken place here in relation to Cst. Kent is totally unacceptable. Senior Mgt. of the Div. need to know what is taking place and then given the opportunity to correct same and hold the appropriate people accountable. Why on earth would it take in excess of two years to complete this investigation? It isn't complex and even if it was, it would not take in excess of 2 years to do. What excuse(s) have the Pottles been given every month in their update letters?**
>
> **Where is the accountability? Cst. Kent deserves to know why this investigation wasn't done in a timely fashion and when exactly is it going to be finished."**

13. The Respondent acknowledged that the delay in the completion of the report and the manner of police investigation were unsatisfactory. Its "Brief" stated the following:

> **"It is acknowledged that the length of time taken by the RCMP to investigate this matter is excessive, and that the manner in which the charges were investigated was not ideal".**

14. The police investigation primarily consisted of interviewing fourteen witnesses. The actual "working time" on the file was a total of four to six weeks.

[26] Having considered the above factors, I have concluded:

(a) that the criminal investigation should have been commenced on November 14, 2002 (and not six months later);

(b) that the complaint should have been "flagged" by the RCMP and should have been investigated on a priority basis;

(c) that the investigation was not a complex one and should have been completed within a period of four to six months;

(d) that there was a failure to properly investigate the complaint;

(e) that the delay of nearly three years before criminal charges were laid against the Applicants was completely unacceptable;

(f) that from the perspective of the complaints, the public and the Applicants, the length of this police investigation brought the administration of justice in this province into disrepute; and

(g) that throughout the three-year period from the complaint to the "laying" of criminal charges, there was no interest or concern expressed by RCMP management about the excessive delay.

[27] I find that the police investigation of the Applicants was unacceptably prolonged, incompetent and amounted to a complete dereliction of duty by the RCMP personnel responsible for the investigation. Accordingly, I find that the conduct of the RCMP, in carrying out the criminal investigation of the Applicants, was an "abuse of process".

5. PREJUDICE

[28] Having determined that the police investigation was an "abuse of process", it is now necessary to determine whether that finding would either render the trial proceedings oppressive or violate the public's sense of "fair play" in relation to the judicial process. In other words, did the "abuse of process" prejudice the Applicants' right to a fair trial or offend judicial "fair play"?

[29] The timeliness of the decision on this application is a consideration. Even if the application is dismissed at this stage, it would be still open to the Applicants to make a similar application for a "stay" during the trial if it became apparent that the evidence disclosed a material change in the level of prejudice to the Applicants or the judicial process.

[30] The Supreme Court of Canada considered the appropriateness of a "stay" application similar to this one in **R.** v. **LA**, [1997] 2 S.C.R. 680. Sopinka, J. (at paras. 27 and 28) stated the following:

> **"The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice that is occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit. This is the procedure adopted by the Ontario Court of appeal in the context of lost evidence cases. In *R. v. B.(D.J.)* (1993), 16 C.R.R. (2d) 381 (Ont.C.A.), the court said at p. 382:**
>
> > **The measurement of the extent of the prejudice in the circumstances of this case could not be done without hearing all the relevant evidence, the nature of which would make it clear whether the prejudice was real or minimal.**
>
> **Similarly, in *R. v. Andrew* (1992), 60 O.A.C. 324 (Ont. C.A.), the court found at p. 325 that unless the *Charter* violation "is patent and clear, the preferable course for the court is to proceed with the trial and then assess the issue of the violation in the context of the evidence as it unfolded at trial". See also: *R. v.***

> ***Francois*** **(1993), 65 O.A.C. 306 (Ont.C.A.);** ***R. v. Kenny*** **(1991), 92 Nfld. & P.E.I.R. 318 (Nfld. T.D.).**
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> **I would add that even if the trial judge rules on the motion at an early stage of the trial and the motion is unsuccessful at that stage, it may be renewed if there is a material change of circumstances. See** ***R. v. Adams*****, [1995] 4 S.C.R. 707 (S.C.C.), and** ***R. v. Calder*****, [1996] 1 S.C.R. 660 (S.C.C.). This would be the case if, subsequent to the unsuccessful application, the accused is able to show a material change in the level of prejudice.".**

[31] Our Court of Appeal considered the timeliness of a "stay" application based on a pre-charge delay in another case involving an RCMP officer. In **R.** v. **Tabor** (1993), 111 Nfld. & P.E.I.R. 103, the trial judge granted a "stay" on the basis that some evidence was lost and the memories of witnesses had faded. The Court of Appeal overturned that ruling. Goodridge, C.J.N., stated the following (at paras. 56 & 57):

> **"A decision to stay on the basis of faded or lost memories is generally one to be made by the trial judge at trial when it becomes apparent that the accused is disadvantaged in making full answer and defence because memories have faded or been lost through delay not of his own making. There may be circumstances where such a decision may be made on a pretrial application but such circumstances do not exist here.**
>
> **The issue here really is whether putting the respondent on trial is unfair. The conclusion which the trial judge reached on the points which he considered do not justify such a conclusion. A stay is the ultimate remedy to be provided, as Dubin J., said in Young, in the clearest of cases. This is not such a case."**

[32] It is necessary for the Applicants to prove that the "abuse of process" was prejudicial in a real and substantial sense rather than in a merely trifling or minimal sense. I will be in a better position to make that assessment after I observe the

witnesses and evidence presented by the Crown during the trial. Therefore, I will exercise my discretion and defer my decision on this application until the conclusion of the case for the Crown. At that time, I will invite further submissions from the parties.

6. SUMMARY

[33] On November 14, 2002 Boyd and Sharon Pottle of Job's Cove complained to the RCMP that they had been handcuffed and detained at gunpoint by two RCMP officers for "no apparent reason". The fact that the alleged criminality took place during the execution of their duties as police officers should have immediately raised an "alarm". The complaint should have been immediately "flagged" and acted upon on a priority basis.

[34] Instead, the complaint was dealt with in a rather leisurely manner. There was no sense of urgency or concern displayed by the RCMP. The police investigation eventually started six months after the initial complaint and it took a further two years to complete.

[35] The investigation should have been simple and straightforward. It required interviewing the Pottles, their son, and his girlfriend. The other witnesses were the RCMP officers who "patrolled" to the scene of the incident on December 14, 2002. At most, the investigation should have been completed within a six-month period.

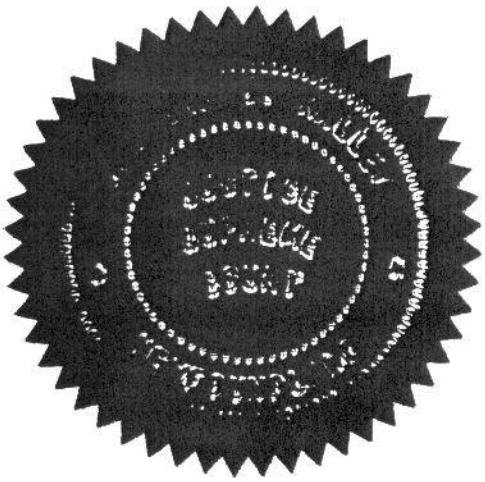
[36] Incredibly, the investigative report was not submitted until March 16, 2005 which was nearly two and a half years after the complaint. It took another seven months for the Applicants to be formally charged with the criminal offences set out in the Indictment.

[37] During the three-year period leading up to the laying of the criminal charges, the two police officers continued to perform their normal police duties in the same communities where the Pottles, their friends and relatives lived, worked and played. Apparently, it did not occur to RCMP management that this was an untenable situation which brought the administration of justice into disrepute.

[38] Having considered the indifference, incompetence and untimeliness of the RCMP in investigating this matter, I find that the police investigation of the Applicants amounted to a complete dereliction of duty and was an "abuse of process".

[39] The circumstances of this case require that I postpone my decision on this application until the Crown concludes its case at trial.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 24th day of October, 2006.



RAYMOND J. HALLEY
Justice