

OPC File Number 2019-008

Date: June 11, 2020

Complainant: Ade Olumide of Dunrobin, Province of Ontario

Re: Chief Officer Paul Smith – Charlottetown Police Service

This is a decision with respect to the complaint of Ade Olumide, of Dunrobin, Ontario, regarding Paul Smith, Chief Officer of the Charlottetown Police Service. Mr. Olumide maintains that Chief Smith's decision not to lay charges of criminal defamation against The Guardian violated the Code of Conduct for Police Officers. He also asserts that Chief Smith's refusal to provide policy justification for that decision was also a violation of the Code. For the reasons set out below, I find that there is no basis to conclude Chief Smith's actions violated the Code of Conduct.

Mr. Olumide's final submissions of April 2020 stated that, if I did not provide the remedies requested by him, he would be seeking judicial review of my decision. As a result, this decision is also the Record of Tribunal in relation to the matter. It commences with a chronology, including all of the documents and evidence considered by me, analyses the submissions made by Mr. Olumide, and, concludes with a decision. On May 29, 2020 Mr. Olumide e-mailed the Commission and attached documents indicating that, on May 1, 2020, he applied for judicial review of my, as of then, unissued decision.

CHRONOLOGY

March 15, 2019 – Justice Thomas determines that Mr. Olumide is a vexatious litigant and prohibits him from commencing any proceeding or appeal without leave of the Court. ([Annex A](#) – last accessed June 7, 2020)

March 21, 2019 – The Guardian publishes a story that was a reprint of a story from the Edmonton Journal. That story reports on the decision of Justice Thomas of the Alberta Queen's Bench. (Edmonton Journal story - [Annex B](#) – last accessed June 7, 2020).

July 9, 2019 – Mr. Olumide sends complaint to Chief Smith ([Annex C](#)).

July 11, 2019 - Chief Smith sends email acknowledging receipt of the complaint stating:

Good Afternoon,

This will acknowledge receipt of your email A formal response to your inquiry will be prepared and forwarded by mail to the Dunrobin ON address.

P. Smith

July 17, 2019 – Chief Smith refuses to lay charges against the Guardian and indicates the file is closed and there will be no further correspondence on the matter. ([Annex D](#))

August 1, 2019 – Mr. Olumide rejects decision of Chief Smith not to lay charges against the Guardian and requests policy justification. ([Annex E](#))

August 9, 2019 – Guardian removes story from the internet.

August 15, 2019 – Mr. Olumide files complaint against Chief Smith entitled – ‘COMPLAINT RE PAUL SMITH CHIEF OF POLICE REFUSAL TO RESPOND TO FIVE S298 S299 CRIMINAL CODE S7 S12 S15 CHARTER POLICY REQUESTS’ ([Annex F](#)). He also submits the documents that he provided to Chief Smith on August 1, 2019 that are included in Annex E.

October 10, 2019 – I determined that the facts before the Commission do not support a possible finding of a violation of the Code of Conduct. I advised Mr. Olumide that since the facts related to events that occurred on August 1, 2019 the six-month limitation in the *Police Act* requires he provide any additional facts that could support a finding of a possible breach by February 1, 2020. ([Annex G](#))

October 23, 2019 – Mr. Olumide makes further submissions regarding his complaint. These consist of:

- Supplementary Complaint to Police Commission re Paul Smith ([Annex H](#))
- Olumide v Conservative Party of Canada – Motion Record ([Annex I](#))

October 26, 2019 – Mr. Olumide resends the documents in Annexes E, F, H and I.

December 3, 2019 – I wrote Mr. Olumide advising that I have considered his submissions and found that the facts that he alleged do not disclose any possible basis upon which a breach of the Code of Conduct could be found. I directed his attention to the decision of the Supreme Court of Canada in *R v Beaudry* (2007) SCC 5. I reminded him that if he has any new facts that could support a finding of the consideration of improper factors he must provide those to me by February 1, 2020. ([Annex J](#))

December 12, 2019 – Mr. Olumide makes further submissions that are arguments with respect to the choice not to lay charges. ([Annex K](#))

January 20, 2020 – I find that the record before me does not allege any facts that could support a finding that Chief Smith considered an improper factor when he determined not to lay a charge against the Guardian. ([Annex L](#))

April 1, 2020 – Mr. Olumide responds to my letter of January 20, 2020 ([Annex M](#))

April 6, 2020 – Mr. Olumide provides further responses to my letter of January 20, 2020 ([Annex N](#)) and ‘Why Ottawa Hospital Should Advocate Against Royal Ottawa Fraud’ ([Annex O](#))

April 13, 2020 – Mr. Olumide makes his final submissions. These include:

- Ade Olumide Final Policy Request ([Annex P](#))
- Last Opportunity to Avoid Court Judicial Review ([Annex Q](#))
- Submissions made to the PEI Human Rights Commission with respect to the publication of this article by the Guardian (Annexes [R](#), [S](#), [T](#), [U](#), and, [V](#))

Any interested party can obtain the documents in the attached Annexes from the Commission offices. This decision will address the salient points raised in the documents.

FINAL DECISION

An administrative body must always concern itself about focusing on the matters within its jurisdiction. The *Police Act* established the Office of the Police Commissioner to review complaints from individuals who have been the subject of actions by police officers that contravene the Code of Conduct and Professional Discipline. That is the only matter that is before me.

I have advised Mr. Olumide that he had until February 1, 2020 to provide any additional facts that could support a conclusion there had been a violation of the Code of Conduct. The *Police Act* clearly requires a complaint to be made within six months of the events giving rise to the complaint. It also requires that a complainant provide the information necessary for a determination regarding the validity of the complaint. While Mr. Olumide did not provide the information within the requested time, I will render a decision on the substance of the matter.

In considering this matter there is a temptation to expand the scope of the issues. This is especially true where the complainant submits many hundreds of pages of documents and claims wrongs from other jurisdictions and in relation to other statutes that are well beyond my authority. Mr. Olumide has a lengthy history of litigation across Canada. Justice Thomas referred to that history and Justice Farrar, Nova Scotia Court of Appeal, again noted it in his December 4, 2019¹ decision. A search on Mr. Olumide's name on the website of the Canadian Legal Information Institute reveals that he is the applicant in proceedings before the Supreme Court of Canada, Federal Court of Appeal, Federal Court Trial Division, Ontario Superior Court of Justice, Alberta Court of Queens Bench, Nova Scotia Supreme Court, PEI Supreme Court, and, the Quebec Superior Court. He is also the plaintiff in a proceeding against the United States Attorney General and the Democratic and Republican bodies in the House of Representatives and Senate. These actions mostly relate to allegations involving electoral matters.

Throughout his submissions, Mr. Olumide has rolled his complaint regarding Chief Smith together with matters before the PEI Human Rights Commission. While the submissions are unclear, his early submissions from 2019 lead me to conclude that he is seeking three remedies:

1. That I direct Chief Smith to lay charges against the Guardian with respect to defamatory libel.
2. That I order The Guardian:
 - a. To print a retraction of the story with which he disagrees; and,
 - b. To print a rebuttal of the story written by Mr. Olumide.

None of these remedies is within the scope of my authority under the *Police Act*. I have no jurisdiction over a person or entity that is not a police officer or police service. I have no authority to direct a police officer to lay a charge.

The only issue before me is the conduct of Chief Smith. All of the other allegations involving electoral actors, mental health professionals, and, government agencies are irrelevant to matters within my jurisdiction. The question before me is simply 'Did the conduct of Chief Smith violate the Code of Professional Conduct'? The simplicity of this matter comes from the fact there is only one

¹ *Olumide v Nova Scotia Human Rights Commission et al* 2019 NSCA 95.

communication from Chief Smith to Mr. Olumide. That is Chief Smith's letter of July 17, 2019. There is no evidence before me of any other communication or involvement of Chief Smith with Mr. Olumide.

Chief Smith's July 17, 2019 letter accurately sets out the information considered by him. As noted by Chief Smith, although Mr. Olumide complains about issues related to his mental health and his mental condition, there is no reference to any mental health condition or issue in the article in question. These references are only contained in the decision of Justice Thomas, which has not been appealed. Chief Smith concluded that the article did not "... meet the thresholds necessary to pursue any criminal action..." There is nothing in Chief Smith's letter that could be characterized as disrespectful or offensive.

The other possible issue that could constitute a violation is Chief Smith's non-response to Mr. Olumide's letter of August 1, 2019 seeking policy justification for the decision not to lay charges against the Guardian. There is no requirement for a police officer to provide a justification for his decision. The decision to lay a charge is a discretionary decision. There are some types of charges, for example domestic violence, where there are policy directives regarding the laying of charges. However, for the vast majority of criminal matters there are no policy documents that would apply. The only question is whether the officer has reasonable grounds to believe that an offence has been committed. He must also determine that it is in the public interest to proceed with a charge. In this case, Chief Smith determined it was not appropriate to lay a charge.

The Supreme Court of Canada was clear in *R v Beaudry* (2007) SCC 5 that the decision to lay, or not lay, a criminal charge is a discretionary decision. Justice Charron wrote:

Nevertheless, it should not be concluded automatically, or without distinction, that this duty is applicable in every situation. Applying the letter of the law to the practical, real-life situations faced by police officers in performing their everyday duties requires that certain adjustments be made. Although these adjustments may sometimes appear to deviate from the letter of the law, they are crucial and are part of the very essence of the proper administration of the criminal justice system, or to use the words of s. 139(2), are perfectly consistent with the "course of justice". The ability — indeed the duty — to use one's judgment to adapt the process of law enforcement to individual circumstances and to the real-life demands of justice is in fact the basis of police discretion. (paragraph 37)

Justice Charron then goes on to conclude that an officer's discretion should only be interfered with where there is evidence the officer considered improper factors. This standard was pointed out to Mr. Olumide in my letter of December 3, 2019. At no time has Mr. Olumide provided any facts which could support the conclusion that Chief Smith considered improper factors in arriving at his decision not to lay charges.

The question then is whether Chief Smith's refusal to respond to Mr. Olumide's request for policy justification of the choice not to lay charges breaches the Code of Conduct. In his letter of July 17, 2019 Chief Smith wrote the Charlottetown Police Service would not respond to any further inquiries barring substantial new evidence. I find there is no obligation, beyond the statement that the thresholds were not met, to provide policy justification for a decision not to lay charges. Chief Smith was clear that new evidence would be received. Mr. Olumide did not provide any further evidence.

The facts of this case are clear:

1. Justice Thomas, Alberta Court of Queen's Bench, in a March 2019 decision determined that Mr. Olumide was a vexatious litigant.
2. That decision made findings regarding Mr. Olumide.
3. That decision is publicly available
4. The decision has not been appealed.
5. Jonny Wakefield of the Edmonton Journal wrote a story about vexatious litigants that was published in the Edmonton Journal on March 21, 2019. That story introduced the problem of vexatious litigants, summarized Mr. Olumide's history of litigation, quoted from Justice Thomas regarding Mr. Olumide's history and summarized the proceeding. There are no statements regarding Mr. Olumide's mental health in the story.
6. The story remains available on the Edmonton Journal website as of the writing of this decision.
7. The Guardian reprinted the story sometime between March 21, 2019 and July 6, 2019.
8. Mr. Olumide complained about the story on the Guardian website.
9. The story was removed from the Guardian website on August 9, 2019.
10. Mr. Olumide made a complaint to the Charlottetown Police Service that the publication of the story by the Guardian was defamatory libel
11. Chief Smith determined there was no basis to lay charges and communicated that to Mr. Olumide.
12. Mr. Olumide asked for policy justification for the decision.
13. Chief Smith did not respond.

I am reluctant to make any finding that could be construed as a substantive review of the decision of Chief Smith. It is unclear to the Commission how a newspaper story which accurately reports on a decision of the Alberta Court could constitute criminal defamation. One could reasonably argue that if the decision were overturned on appeal there is a moral obligation on a news outlet that reported the first decision to also report on the appeal. However, that is not a matter of criminal law.

The exercise of discretion by a peace officer should only be interfered with where there is evidence the officer considered improper factors. The Commission's function is not to substitute its judgement for that of the officer unless the decision is unreasonable in the circumstances. Even if I determined the decision was unreasonable the Commission does not have the authority to direct the laying of charges. I can only direct the educational or disciplinary steps authorized under the *Police Act*. The Commission would only exercise that authority where the facts showed either a significant deviation from the standard of conduct expected of a peace officer when he arrived at his decision, or, that the officer considered improper factors in deciding not to lay charges.

Mr. Olumide was invited on three occasions to provide evidence that improper factors were considered. On each occasion he did not provide any new facts. Instead he expanded his claims to deal with unrelated matters involving elections act proceedings in Canada and the United States and mental health disputes with medical authorities. In his December submission Mr. Olumide added in allegations of systemic racism on the basis that the Guardian story was a reprint of '...white judicial falsehoods...' Again, none of these matters related to the facts before the Commission regarding the conduct of Chief Smith.

It is apparent that Mr. Olumide vehemently disagrees with the decision of Justice Thomas and the contents of the Edmonton Journal (by extension, he also disagree with the publication of that story in

The Guardian) story regarding that decision. However, Mr. Olumide did not take any steps to appeal the decision of Justice Thomas that formed the basis of the story. To the extent that Mr. Olumide disagrees with the newspaper story then it would have been open for him to pursue a civil defamation proceeding. The burden of proof in a civil proceeding is much lower, on a balance of probabilities, than in a criminal proceeding, beyond a reasonable doubt.

I find there is no factual basis upon which I could conclude that Chief Smith considered any improper factors in deciding not to lay charges of defamatory libel in relation to the story carried by The Guardian about the decision of Justice Thomas. Given all of the facts of this case Chief Smith's decision, as explained in his letter of July 17, 2019, met all of the necessary standards of conduct. I find that, absent new evidence from Mr. Olumide, there was no obligation for Chief Smith to take any further step in this matter in response to Mr. Olumide's August 2019 request for policy justification of the decision not to lay charges.

I find there are no facts before me which could support a finding that Chief Smith breached the Code of Conduct and Professional Discipline.

Thomas W. Jarmyn, CD

Police Commissioner Prince Edward Island