22

IN THE MATTER OF
The Police Act, R.S.N.S. 1989, Chapter 348
and Regulations made pursuant thereto

A N D

IN THE MATTER OF
The Notice of Review, in Form 10, filed by People on Welfare for Equal Rights (P.O.W.E.R.) against Constable Michael Spurr of the Dartmouth Police Department and heard by the Police Review Board in Halifax on May 30 and 31, 1991.

D E C I S I O N

BEFORE Barry J. Alexander, Chairman
Malcolm Jeffcock, Member
Gary R. Miller, Member

COUNSEL Richard L. Evans, Solicitor on behalf of People on Welfare for Equal Rights (P.O.W.E.R.)
Brian F. Bailey, Solicitor on behalf of Constable Michael Spurr
Michael H. Moreash, Solicitor on behalf of the Dartmouth Police Department

This matter arose as a public complaint by an organization called People on Welfare for Equal Rights (P.O.W.E.R.) against Constable Michael Spurr of the Dartmouth Police Department. Constable Michael Spurr was alleged to have made certain statements which were alleged to be discreditable and were reasonably likely to bring discredit to the reputation of the Dartmouth Police Department and thus breach the Code of Conduct and Discipline in Part II of the Regulations made pursuant to the Police Act, and in particular, Regulation 5(1)(a)(i). It is also alleged that the statements were false, misleading and inaccurate and thus breached Regulation 5(1)(d)(i). Furthermore, it is alleged that the statements are uncivil and discourteous and, in particular, uncivil and discourteous to the members of P.O.W.E.R. and thus have breached Regulation 5(g)(iii).

It is clear that this was only a complaint against Constable Spurr. The complaint form and all supporting documents submitted in evidence indicate this. However, an attempt was made at the hearing to widen the scope of the complaint to include the Chief of the Dartmouth Police Department, namely Chief Donald J. Trider, and the Dartmouth Police Department generally. The Board ruled at the hearing that the matter for our determination involved the complaint against Constable Spurr only. There was no Form 5 Complaint against Chief Trider nor against the Dartmouth Police Department. The events which gave rise to the complaint were specific to Constable Michael Spurr. Therefore, the Board attempted to limit the evidence presented to that evidence which was relevant to the complaint against Constable Michael Spurr.

The facts are relatively straightforward and not in dispute. It is only the exact words or the interpretation of those words used by Constable Michael Spurr and the context in which they were used that is in dispute.

The comments of Constable Michael Spurr were alleged to have been made on April 28, 1990, at a forum on Alcohol and Drug Abuse in Dartmouth. Constable Michael Spurr was one of the organizers of this event. The purpose of the forum was to develop a strategy to help combat drug abuse in the City of Dartmouth. The forum was open to the public and members of the Press were encouraged to attend. Obviously, one of the aims of the forum would be to publicize the event in order to make the public aware of the extent of the drug problem in the City of Dartmouth and the steps that could be taken to combat the problem.

During the afternoon of the forum the people in attendance dispersed into discussion groups. These discussion groups were described as being brain-storming sessions. Mayor Savage of the City of Dartmouth,

during his words of introduction, described the group sessions which were to follow as a "free-for-all" so that everyone present could have an open exchange of ideas.

Constable Michael Spurr attended one of the discussion groups. Approximately twenty to thirty other members of the public were present. Constable Spurr was in uniform and he was on duty. Constable Spurr was present at the forum in an official capacity and, in particular, as one of the organizers of the event.

It was at this discussion group that Constable Spurr was alleged to have made certain comments which were derogatory and stereotyped people who were on welfare. The exact words used by Constable Spurr are, in the opinion of the Board, not crucial to our final decision. In the opinion of this Board, what is crucial is the affect of the words used by Constable Spurr, his intention and whether those words were discreditable or likely to bring discredit to the reputation of the Dartmouth Police Department.

Sandra J. Porteous, a reporter with the Daily News, was present at the group discussion. Much was made of the fact that Constable Spurr did not know that the Press were present. In the opinion of the Board, this is not significant. Other members of the public were present and one would reasonably expect considering the nature of the forum, a member of the Press could have or would have been present.

Sandra J. Porteous' evidence indicates that during the group session there was discussion about teenagers and various aspects of their involvement in drugs. During this discussion, Sandra J. Porteous indicates that Constable Spurr made certain comments, including, "their parents are dipping into a limited gene pool", and "kids on welfare who grow up on welfare tend to stay on welfare", and "the parents of kids on welfare should be on birth control".

Sandra Porteous indicated in her evidence that she was surprised to hear such comments in a public forum. She found the comments inappropriate and disparaging to people on welfare. As a result she wrote an article in the Daily News. This article gained widespread publicity resulting in other newspaper, radio and television coverage. Brian F. Bailey, Solicitor for Constable Spurr, argued that this widespread publicity inflamed the situation. He attempted to show that the reporting on the incident was inaccurate and aimed at sensationalizing the event. On the other hand, Richard L. Evans, Solicitor for the P.O.W.E.R. group argued that this Board should not be sidetracked into turning these proceedings into a trial of the media. In the opinion of the Board the publicity which flowed from the event should not be a significant factor in assessing the complaint before this Board. Neither Constable Spurr nor the complainant have any control over how the Press react to a situation and what they report. This Board must determine objectively the validity of the complaint and the seriousness of the comments in the context of the atmosphere in which they were stated.

Other witnesses gave evidence about the comments made by Constable Spurr including Lloyd S. Randell who was chairing the group discussion on the afternoon in question. Lloyd Randell recalls hearing words to the effect that, "people on social assistance should be on forced birth control". He did not recall any comments concerning a "limited gene pool".

Constable Judith MacPhee gave evidence that she recalled comments such as "people on welfare...or while they're on welfare...should practise birth control". Constable MacPhee indicated that Constable Spurr prefaced his comment with remarks that people may find the solution unusual but it was not being stated to offend anyone. Constable MacPhee did not recall hearing any comments concerning "a limited gene pool".

Constable Spurr's evidence is that a woman in the group discussion suggested that more money should be put into social programs. Constable Spurr disagreed. He stated that he did not want his comments misunderstood but that in his opinion although he had no objection if welfare was paid to a person who justly deserved it, he believed, "people on welfare should take the responsibility and not expand their families while they are on welfare". There was other discussion and at that point Mr. Randell, who was chairing the session, redirected the conversation to the topic of consideration. At that point Constable Spurr indicates that he directed a comment to the man sitting in front of him such as, "in some cases it's a shallow dip in the old genetic pool". Constable Spurr indicates that he did not intend this comment to be heard by the entire group. He states that he made the comment to the gentleman in front of him as a personal comment between the two of them. However, Constable Spurr made the comment loud enough that Sandra J. Porteous, the reporter for the Daily News who was sitting at the back of the room could hear him. The Board also finds it rather unusual that Constable Spurr would make such a comment to a man sitting in front of him who he did not know.

Regardless of the exact words used, the meaning to be attributed to the words is clear. The words are an attempt to stereotype people who are on welfare. The words create a negative stereotype for people who are or have been on social assistance. The affects of stereotyping have an effect on the public at large and, in particular, to people who are or have been on social assistance.

The evidence of Richard M. Williams indicates that there is no reality or basis in fact to the comments made by Constable Spurr. Mr. Williams states that the suggestion made by Constable Spurr uses a negative connotation and attributes it to a whole group of individuals. Mr. Williams indicates that, in his opinion, the affect on people on welfare to such a comment made by a police officer in uniform during a public forum would be significant. He indicates that comments which stereotype

groups of people cause those groups to have a negative self-image. However, in cross examination, Mr. Williams indicated that comments made at a group discussion in which there was to be an open exchange of ideas in the nature of a brainstorming session or, as Mayor Savage had termed it, "a free-for-all", the impact would not be as severe. He stated that in his opinion, if the incident had not been reported, and if the incident had not received widespread publicity, the impact would be less significant.

After considering all the circumstances this Board has no hesitation in finding that the comments made by Constable Spurr were inappropriate. The comments stereotype people who are on welfare. The comments are insulting and derogatory to people who are on welfare. The comments should not have been made and, in particular, should not have been made by a police officer, in uniform, on duty, and at a public forum.

A high standard of police discipline and conduct is expected of police officers. Police officers are in a position of authority. They must deal with many different types of people and, in particular, many different racial groups and economic classes. A police officer must conduct himself in such a manner that he can deal with these different segments of our society with respect and dignity. The comments made by Constable Spurr breach the high standard that we expect of police officers in our Province.

In considering the penalty to impose upon Constable Spurr we must take into consideration all the circumstances. This Board takes into consideration that the comment was made by Constable Spurr in a group discussion termed a brainstorming session or, as Mayor Savage had called it, a "free-for-all". The purpose of the group session was to generate discussion and ideas. Everyone was encouraged to state whatever was on their mind. Some ideas were accepted, others were

rejected; but all were discussed. We have taken into consideration that Constable Spurr has an exemplary police record. He has no discipline record and no record of public complaints against him. This Board is of the opinion that these are mitigating circumstances. For this reason we impose a reprimand on Constable Spurr rather than a more serious penalty.

There were numerous other remedies suggested by Counsel for the Complainant and, in particular, against the Dartmouth Police Department and Chief Trider. As stated previously in this Decision, this was a complaint against Constable Michael Spurr. It was not a complaint against the Dartmouth Police Department generally nor against Chief Trider. Other members of the Dartmouth Police Department and, in particular Chief Trider, had nothing to do with the comments made by Constable Spurr. There were allegations that the complaint of P.O.W.E.R. was not dealt with properly. However, no such complaint has been filed. Therefore, this Board does not consider the remedies suggested by Mr. Evans as they affect the Dartmouth Police Department and Chief Trider to be appropriate.

However, this Board does agree that it has the authority under Section 33(1)(c) of the Police Act to:

> "find that the matter under review has validity and recommend to the body responsible for the member of the municipal police force what should be done in the circumstances;"

We do acknowledge that there is merit in recommending to the Dartmouth Police Department that steps be taken to educate and train members of the police force on various issues including race relations, and relationships with various economic groups. We do note that the Dartmouth Police Department has started the process by instituting certain policies on these issues. These and other steps can only result in a better educated police force and education will lead to improved relations with various segments of our society.

On the issue of costs, we note that the Complainant's Solicitor, in his post-hearing memorandum, simply states, "Section 33(1)(g) of the Act and Section 27(1)(g) of the Regulations permits the Board to award costs. The complainant requests an opportunity to make further submissions on the question of costs, including disbursements, following the rendering of the Board's written decision on the merits of this complaint." The Solicitor for Constable Spurr, in his memorandum, did not address the issue of costs. The Board will therefore hear submissions with respect to the issue of costs if the parties are unable to reach agreement between themselves.

In conclusion, this Board finds that Constable Michael Spurr has breached the Code of Conduct and Discipline as set forth in the Police Act and that a reprimand shall be placed on his record.

DATED at Dartmouth, Nova Scotia, this 8TH day of October 1991.

Barry J. Alexander, Chairman

Malcolm Jeffcock, Member

Gary R. Miller, Member.

1991 S. SN. No. 07175

IN THE MATTER OF: The Police Act, R.S.N.S. 1989, c. 348 and Regulations made pursuant thereto;

-and-

IN THE MATTER OF: Preliminary matters regarding the complaint of the Nova Scotia Advisory Council on the Status of Women against Chief of Police George Brown of the North Sydney Police Department heard by the Police Review Board on June 12, 1991, at Sydney, Nova Scotia

-and-

IN THE MATTER OF: An application for an Order of Certiorari to quash the Decision of the Police Review Board dated the 12th day of September, A. D., 1991, investigation of the beforementioned complaint until the application for Certiorari can be heard.

BETWEEN:

CHIEF GEORGE BROWN

APPLICANT

- and -

THE NOVA SCOTIA ADVISORY COUNCIL ON THE STATUS OF WOMEN and THE POLICE REVIEW BOARD

RESPONDENTS

Goodfellow, J.:

This is an application for judicial review of determinations made by the Nova Scotia Police Commission Review board (Review Board) which are challenged as being exercises beyond the jurisdiction of the Review Board.

BACKGROUND:

On December 4, 1990, A. Keith Shears, a Crown Attorney, introduced Shirley Bardswich, the Cape Breton Field Representative of the Nova Scotia Advisory Council on the Status of Women (Advisory Council) to George Brown, Chief of Police for the North Sydney Police Department.

Arising from this meeting, the Advisory Council, by Debi Forsyth-Smith, its President, did on the 5th day of April, 1991, lay a formal complaint against Chief Brown with the Review board.

Pursuant to regulation 6(2) of the Police Act, a complaint is to be made within 30 days of the occurrence complained of which, in this case, would mean on or before the 4th day of January, 1991, and the complaint here was filed the 5th day of April, 1991. While well beyond the 30 day period, this is not fatal because as the Review Board advised the Advisory Council on the 11th day of April, an application to extend the time for filing a complaint could be advanced. The Advisory Council did this on April 12, 1991, but it was not until the 12th day of June, 1991, that the Review Board sat to hear the following preliminary issues:

(1) Whether the Nova Scotia Advisory Council

on the Status of Women have standing as "a member of the public" to lay a complaint under the **Police Act**?

(2) Whether the Police Review Board should exercise its discretion and extend the time for filing the complaint.

(3) Whether the matter could be proceeded with in light of the expiry of the overall six month limitation period to conduct an investigation.

The Review Board, in its written decision of the 12th of September, 1991, decided:

(1) That the Advisory Council had standing.

(2) The Review Board stated at page 2 of its decision:

> "Margaret MacDonald, on behalf of the complainant, made a motion to extend the time for filing the complaint. The facts which gave rise to the complaint occurred on December 4, 1990. It appears that certain remarks were allegedly made by Chief Brown which a Field Worker for the Council felt were inappropriate. The Field Worker included the events and the alleged comments made by Chief Brown in her monthly report to the Council. The Council received the monthly report on January 1, 1991, but there was insufficient information in the report to justify any action. As a result the Acting Director wrote to the Field Worker on January 4, 1991, requesting her to give a more formal and detailed report. The first meeting in which the Council met and had the

> report for their consideration was on April 5, 1991. At the Council meeting on April 5th, the report was considered and the Council approved the filing of the complaint. The complaint was then filed on the same day with the Nova Scotia Police Commission."
>
> and also at page 3:
>
> "The explanation for the delay in filing the complaint by the Council is, in the opinion of the Board, fair and reasonable. In order for the Council to lay a complaint, it had to be approved by their Board of Directors. Even if it had been approved by the first Board of Directors meeting following the occurrence of the alleged complaint, they could not have met the thirty day time limit."

The Review Board treated the complaint of April 5, 1990, which was out of time, as still being outstanding. In so doing, it validated a complaint out of time rather than grant entitlement by way of extending the time to file a complaint.

(3) The Review Board acknowledged "clearly the six months from the date of the alleged disciplinary default has expired" and held that regulation 12(4) under which "the Review Board may not extend the time to complete the investigation beyond six months from the occurrence of the alleged disciplinary default" was not mandatory but only a directory provision.

POLICE ACT AND REGULATIONS

Police Act R.S.N.S. 1989 c. 348

> "Regulations
> 46(1) The Governor in Council may make regulations,
>
> (i) prescribing the procedures for dealing with complaints;
>
> (j) respecting the investigation powers of the person assigned by the investigative branch of the Commission to conduct an investigation pursuant to this Act;
>
> (x) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act including the government of the Nova Scotia Provincial Police."

Scope of Regulation

(2) Any regulation made under the authority of subsection (1) may be general or particular in its application.

Regulations

Regulation 101/88

The relevant regulations made pursuant to the **Police Act** are:

> "6 (2) A member of the public may make a complaint concerning a member of a

municipal police force, including its chief officer, to

(a) the complaints officer of the police force of which the person complained of is a member or, if the complaints officer is not available, to any member of that police force;

(b) the secretary to the board of police commissioners of the municipality which the police force is responsible for policing; or

(c) the Commission,

within thirty days after the occurrence which gave rise to the complaint.

9 The Review Board may, on application before or after a time limit has expired, extend the time for filing a complaint for up to a maximum of six months from the occurrence which gave rise to the complaint where it is satisfied that there are reasonable grounds for granting an extension and the extension will not unduly prejudice the member in respect of whom the complaint is made.

12(4) An investigation shall be completed within sixty days from the occurrence of the alleged disciplinary default unless the time is extended by the Review Board, however, the Review Board may not extend the time to complete the investigation beyond six months from the occurrence of the alleged disciplinary default."

NATURE OF APPLICATION

An application for an order in the nature of certiorari is one for judicial review not one of appeal. The merits of the complaint are not in question on this

application, indeed the particulars of the complaint are unknown and not part of the record before the court.

Glube, C.J.T.D., in **Hubley v. Workers' Compensation Board (N.S.)** (1991) 106 N.S.R. (2d) 21 affirmed the statement at page 25:

> "The Court is concerned with the validity of the tribunal's decisions, not with their wisdom. The function of the Court is to consider only whether the tribunal had authority to do what it purported to do. This authority may be lost through a jurisdictional error or an error of law on the record."

and further:

> "The court is, in short, not concerned with the merits of the case. Many questions that might properly be considered by a court on an appeal are irrelevant to motions for certiorari. Thus despite the court's view that a tribunal's decision may be wrong it is beyond the court's power to correct it so long as it is made without jurisdictional error or recorded legal error."

Saunders, J. in **White v. Dartmouth (City) et al** 106 N.S.R. (2d) 47, was faced with an application to overturn the decision of a Police Review Board which held that the officer was guilty even though the Regulation numbers by which she was charged did not precisely correspond to the Regulation number for which she was found guilty. It was clear on the record that the police officer knew precisely

the nature of the allegations against her and had no doubt as to her position.

Saunders, J., at page 50, referred to the fact that Section 33(3) of the **Police Act** provides:

> "The decision of the Review Board shall be final."
>
> and went on to state:
>
> "Curial deference is extended to administrative tribunals on account of this specialized purpose, expertise and the speed and efficiency with which they do their work."

Justice Saunders declined to interfere with the Police Review Board's determination.

I will now deal with the issues in turn.

1. Does the Nova Scotia Advisory Council on the Status of Women have standing as "a member of the public" to lay a complaint under the **Police Act**?

Council for the Advisory Council advances the duties and powers as contained in its statute directs the conclusion that it is a "member of the public". The Advisory Council on the **Status of Women Act** R.S.N.S. 1989 c. 3, sets out the duties and powers of the Council:

"Duties

4 (1) The Council shall

(a) advise the Minister upon such matters relating to the status of women as are referred to the Council for consideration by the Minister;

(b) bring to the attention of the Minister matters of interest and concern to women.

Powers

(2) The Council in carrying out its duties pursuant to subsection (1) may

(a) receive and hear petitions and suggestions concerning the status of women;

(b) undertake and recommend research on matters relevant to the status of women;

(c) recommend and participate in programs concerning the status of women;

(d) propose legislation, policies and practices to promote equality of opportunity and status; and

(e) publish reports, studies and recommendations. 1977, c. 3, s. 4."

I agree that the legislation gives the Advisory Council broad powers to carry out its mandate, but that does not qualify it as "a member of the public" nor does it give mandated power to involve itself in complaint processes. If it is desirable for the Advisory Council to involve itself in complaint processes then its legislation

should be amended to so mandate it.

Counsel for the Advisory Council referred the court to a number of judicial determinations of the word "public", including Spence, J. in **Langdon's Coach Lines v. T.T.C.** (1956), 1 D.L.R. 319 at 325-6:

> "'There is no reason why the word "public" should be given anything but its ordinary meaning. The definition contained in Murray's Oxford Dictionary is: 'The community as an aggregate, but not in its organised capacity; hence, the members of the community,' and it is in that sense, as it seems to me, that the words "the public," are used in this section.'
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> In **Great Central R. Co. v. Metropolitan R. Co.** (1898), 15 T.L.R. 86, Lindley M.R. said a railway authorized to be open for public traffic means open for the public traffic generally, and not merely open for mineral traffic.
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> In **Devoy's Case** (1841) 1 Ir. Circ. Rep. 74 at p. 75, Pennefather B. said: by public way 'I mean not merely a mail coach road, but every way which is common to the Queen's subjects.' (The italics are mine.)
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> In **Tycholitz v. Crop** (1936), 44 Man. R. 146, it was held that a truck in which a market gardener drove his employees to work was not a public service vehicle within the meaning of the **Highway Traffic Act** of Manitoba.
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> In **Struthers v. Sudbury** (1900), 27 O.A.R. 217 at p. 221, Osler J.A. said: 'One meaning of the word [public] is "open for the use, enjoyment, or participation of all, either free or on payment of a fee."'

> The Concise Oxford Dictionary 4th ed., p. 971, defines 'public' in part as follows: 'Of, concerning, the people as a whole ... open to, shared by, the people.'"

I think the common denominator of "a member of the public" is people, individuals and collectively. One is a member of the citizenry an individual human being with rights of equality, etc., when one is a member of the public.

The Review Board correctly noted that there is no definition for "a member of the public" in the statute or regulations and that other legislation which used the words "a person" has been construed to include incorporated bodies. I do not quarrel with the Review Board's comments other than to note the **Interpretation Act of Nova Scotia** expressly defines "person" as including a corporation. The Advisory Council is a legal entity, but that does not make it a member of the public.

If the Legislature in enacting the Police Act wished to confer standing upon, governments, agencies, associations, corporations, etc., then all it had to do was use the word "person", rather than "member of the public". It chose not to and in my opinion, excluded such, giving the power of complaint to every Jane and John Doe as members of the public. Every individual member of the public has the right of complaint.

In this case, Ms. Bardswick, in her own right, and possibly the Crown Attorney could have processed a complaint. The Court was advised Mrs. Bardswick did not do so personally due to the Advisory Council's internal policy precluding an employee from filing such a complaint. The Advisory Council has no power by contract or otherwise to disentitle any member of the public from filing a personal complaint. Such a policy contravenes the entitlement of every member of the public to file a complaint.

I find that the Review Board exceeded its jurisdiction in granting status to the Advisory Council which does not qualify under the existing legislation as "a member of the public" and such is a serious jurisdictional flaw requiring judicial intervention.

2. Whether the Review Board had the discretion to extend the time for filing a complaint.

I do not think the validation of a complaint out of time, rather than more correctly granting entitlement by way of extending the time to file a complaint warrants judicial intervention.

What does warrant judicial intervention, however,

is the attempt by the Review Board to override Regulation 9. This Regulation is clear and only authorizes the Review Board to renew the time for filing a complaint for "up to a maximum of six months from the occurrence" which in this case, was up to the 4th day of June, 1991. The Review Board by not dealing with the application for extension until June 12th, 1991, put itself beyond the limitation set by Regulation 9.

Counsel for the Advisory Council invites the Court to hold Regulation 9 invalid as a restriction on the **Police Act**. If it were clear that the Regulation was restrictive so as to defeat the intent of the Legislation then such course would be appropriate.

The limited record before me suggests the problem lies not with the time frame set out in the Regulation but the delay occasioned by the Policy of the Advisory Council in taking four months to process the complaint, coupled with the delay of the Review Board in addressing the complaint when it was finally advanced by the Advisory Council.

At one time the Regulations under the **Police Act** precluded proceedings six months after the occurrence of disciplinary default or three months after the occurence came to the attention of the Chief, which ever period is

shorter.

These regulations were determined is valid and mandatory by this court in **Perrot v. Storm et al** (1985) 65 N.S.R. (2d) 271, confirmed on appeal (1985) 67 N.S.R. (2d) 91.

3. Whether the matter could be proceeded with in light of the expiry of the overall six months limitation period to conduct an investigation.

My comments and findings on issue 2 apply here with even greater force because Regulation 12(4) clearly prohibits the Board from extending the investigation period beyond six months. ".....the Review Board may not extend the time to complete the investigation beyond six months from the occurrence of the alleged disciplinary default."

The finding of the Review Board is, in my opinion, one that exceeds its jurisdiction.

Regulation 12(4) cannot be ignored by merely stating that an occasion may arise where a complaint could be frustrated by a lengthy investigation. This is pure speculation and there was no evidence before the Review Board or this court suggesting the six month restriction

created the problem. The limitation was reached here because of the combined delay of the Advisory Council in following its own policy and the delay of the Review Board in failing to deal with the complaint in a timely fashion when it was finally placed before the Board on April 12, 1991.

CONCLUSION

The Application is granted and an Order for Certiorari will issue. Counsel are entitled to be heard on the matter of Costs and Disbursements and I direct they shall set out their respective positions to the court in writing by the 16th day of March, 1992.

J.

Halifax, Nova Scotia
March 4, 1992