

2012 CarswellOnt 11158,

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M. (R.) v. Toronto Police Services Board

R.M., Applicant and Toronto Police Services Board, William Blair, Brian Kellar, Christopher Groff, Michael Thomson and Peter Eckersall, Respondents

Ontario Human Rights Tribunal

Brian Eyolfson V-Chair

Judgment: August 30, 2012

Docket: 2010-06581-1

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Counsel: Counsel — not provided

Subject: Constitutional; Criminal; Employment

Criminal law

Human rights

Cases considered by *Brian Eyolfson V-Chair*:

M. (R.) v. Toronto Police Services Board ([2011](#)), [2011 CarswellOnt 1747](#), [2011 HRTO 410](#) (Ont. Human Rights Trib.) — referred to

***Brian Eyolfson V-Chair*:**

Introduction

1 A hearing in this matter is currently scheduled for October 16, 17 and 18, 2012. This Case Assessment Direction ("CAD") addresses a number of preliminary issues that have been raised in this matter.

Request for Summary Hearing

2 On July 6, 2012, the individual respondent, Michael Thomson, filed a Request for Summary Hearing. On July 13, 2012, the applicant filed submissions in response to the Request for Summary Hearing.

3 Rule 19A.5 of the Tribunal's Rules of Procedure provides that the Tribunal need not give reasons for a decision not to hold a summary hearing. The Tribunal has considered the Request and the Request to hold a summary hearing is denied.

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Delay

4 On February 14, 2011, the respondents, Police Chief William Blair, and Police Constables Peter Eckersall, Christopher Groff and Brian Kellar (the "Respondent Officers"), filed a Request for an Order During Proceedings ("RFOP") to strike portions of the Application on the basis of delay. On February 17, 2011, the applicant filed submissions in response to this RFOP.

5 In an Interim Decision dated February 25, 2011, [[M. \(R.\) v. Toronto Police Services Board](#)] [2011 HRTO 410](#) (Ont. Human Rights Trib.), the Tribunal dismissed the Respondent Officers' RFOP dated February 14, 2011, without prejudice to their ability to raise timeliness issues at a later stage of the proceeding. In particular, the Tribunal stated, in part, as follows at paragraph 10 of its Interim Decision:

At this early state of the proceeding and without the benefit of documents that may be available to the parties in the YCJA proceedings, the Tribunal cannot fairly determine whether the allegations contained in the Application are timely in that they form part of a series of incidents within the meaning of section 34 of the *Code*.

6 On July 20, 2012, the Respondent Officers renewed their request that the Tribunal issue a decision on their RFOP dated February 14, 2011 to dismiss certain allegations on the basis of delay. The Respondent Officers reiterated this request on August 15, 2012. The Tribunal has been advised that the parties have obtained a court order from the Youth Court providing them with access to the documents from the YCJA proceedings.

7 In the circumstances, the Tribunal proposes to address the issue of delay raised by the Respondent Officers. Before doing so, the Tribunal will provide the parties with an opportunity to make additional submissions on the issue of delay, as set out below.

Request to Remove Individual Respondents

8 On July 20, 2012, the Respondent Officers also filed an RFOP to remove the individual respondents, Eckersall, Groff and Kellar. On July 24, 2012, the applicant filed submissions in response to this RFOP. The Tribunal may address this RFOP when it addresses the issue of delay, or issue further directions.

Directions

9 If the applicant would like to make any additional written submissions on the issue of delay, he may do so within seven days of the date of this CAD. The respondent parties may make written submissions, in reply, within twelve days of the date of this CAD. After the Tribunal has received submissions on the issue of delay, or the time for providing submissions has passed, the Tribunal may determine the issue or provide further directions. The parties should reference documentation obtained from the YCJA proceeding in support of their arguments on the issue of whether the allegations form a series of incidents.

10 While the October 16, 17, and 18, 2012 hearing dates remain as scheduled, the delivery and filing requirements pursuant to the Tribunal's Rules 16.2, 16.3, 17.1 and 17.2 are temporarily suspended. The Tribunal will issue further directions regarding delivery and filing requirements.

11 The parties are directed to file a copy of the Youth Court Order providing them with access to the YCJA materials. The Tribunal may seal its registrar file and/or issue a publication ban as necessary to ensure compliance with this Order.

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