

File Name: In the matter involving a complaint under the Human Rights Act by Kirk Johnson against the Halifax Regional Police Service and/or Constable Michael Sanford

Date of Decision: December 23, 2003

Area(s): Provision of or access to services or facilities

Characteristic(s): Race/colour

Complaint: Kirk Johnson, a well-known boxer from Nova Scotia living in Texas, was riding as a passenger in his own Texas-registered vehicle which was driven by Earl Fraser. Both men are black. A police vehicle driven by Constable Sanford of the Halifax Regional Police Service slowed down sharply, allowed them to pass, then followed and stopped the car. Cst. Sanford called for police back-up, rejected Mr. Johnson's valid insurance and registration documents, and had the car ticketed and towed. Mr. Johnson alleged that these actions, and the fact that they were perceived and treated as potential criminals, was due to their race and/or colour.

Decision: The police discriminated against Mr. Johnson and Mr. Fraser.

Test for Discrimination

For discrimination to occur, race does not have to be the only, or even the major cause of disadvantaged or burdensome treatment. If it is a factor in the treatment, it is discrimination.

Racial Discrimination and Subconscious Stereotyping

Discrimination can arise from subconscious stereotyping as well as conscious decisions. This can lead to "Racial Profiling" by police, which means targeting some members of a particular racial group because they have stereotypes that the group is more likely to be involved in crime. The Board found that Cst. Sanford noticed that the car's passengers were black men, and his decisions that followed were influenced by racial stereotypes. The board found that Cst. Sanford acted upon the stereotype that black males are criminals. The Board found that he did not give Mr. Johnson a chance to explain the Texas documentation, and lacked courtesy towards Mr. Johnson. The Board found that Cst. Sanford would have treated a white driver differently, and concluded that the incident was because of Mr. Johnson's race and/or colour.

Employer's Responsibility

Employers are responsible for the conduct of their employees and therefore, the Halifax Regional Police Service was responsible for these events. The Board identified various training deficiencies

Remedy:

Individual Remedies

- General damages: \$10,000 to Mr. Johnson, \$1,000 to Mr. Fraser
- Complainant's cost of travel to hearing: \$4920
- Hearing costs: To be determined by parties

Public Interest Remedies

- Solicit and publish report on need for diversity training, and respond publicly;
- Engage consultant on restorative justice theory for police complaints;
- Enable opportunity for sincere apology (suggested);

Johnson Decision on costs: On May 28, 2008, the Board Chair found that he had the authority to award legal costs; he determined that Mr. Johnson should be awarded two-thirds of his lawyer's bill which are found to be reasonable after taxation. The Nova Scotia Court of Appeal then rejected this finding of costs, reasoning that costs could not be read into the Nova Scotia *Human Rights Act* which was silent on the issue. The Nova Scotia Human Rights Act was amended in 2007 pending the drafting of regulations for costs.