



# Employment Court of New Zealand

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## Ramsay v Commissioner of Police CC5/09 [2009] NZEmpC 48 (11 June 2009)

Last Updated: 22 June 2009

### IN THE EMPLOYMENT COURT

CHRISTCHURCHCC 5/09CRC 11/07

IN THE MATTER OF proceedings removed from the Employment Relations Authority

BETWEEN BRUCE DAVID RAMSAY

Plaintiff

AND COMMISSIONER OF POLICE

Defendant

Hearing: 23 March 2009 to 27 March 2009

30 March 2009 to 3 April 2009

(Heard at Christchurch)

Appearances: Scott Fairclough, Counsel for Plaintiff

Aaron Martin and Lisa Fong, Counsel for Defendant

Judgment: 11 June 2009

### JUDGMENT OF JUDGE C M SHAW

#### Introduction

[1] Bruce Ramsay is a former police officer who was stationed at the Temuka Police Station. In 2003 his application for voluntary disengagement from the police was accepted. He then raised personal grievances for constructive dismissal and unjustified disadvantage because of his dissatisfaction with the way the defendant (the police) dealt with two investigations: one into a complaint he had made about his supervising officer, Sergeant Smith, and the other into a complaint made against him by a member of the community to the Police Complaints Authority (PCA).

[2] Mr Ramsay also alleges that a number of other procedural deficiencies by the police amount to breaches of the defendant's duty of trust and confidence to him which caused him to voluntarily disengage from the police.

[3] Mr Ramsay's personal grievances were removed from the Employment Relations Authority to the Employment Court for hearing.

#### Preliminary matters

[4] A significant part of Mr Ramsay's case and therefore the evidence concerned the way Constable Christine Coy, one of his fellow police officers, had been treated by the police.

[5] Ms Coy, who gave evidence in support of Mr Ramsay, brought her own personal grievance which is yet to be heard in the Employment Court. I made it clear to counsel that no judgment would be made about the merits of Ms Coy's claims in this case. Counsel for the defendant did not challenge her evidence in cross-examination but this was on the understanding that her evidence was not accepted by the defendant but that many of the factual disputes arising from her evidence falls outside the scope of the present case. Her evidence is relevant to this case only because the way Ms Coy was being treated was one of the reasons for the actions Mr Ramsay subsequently took.

[6] There was also a considerable amount of evidence led by both the plaintiff and the defendant about Sergeant Smith's investigation of certain criminal offences about which Mr Ramsay had complained.

[7] Again, counsel was advised at the hearing that it was not for this Court to judge the propriety of police investigations into criminal offences. That evidence was relevant only to the extent that it revealed the reason why Mr Ramsay complained about Sergeant Smith.

## The law

[8] Counsel agreed the principles to be applied in a case of constructive dismissal. These are that the plaintiff must establish that his decision to disengage was caused by an express or implied breach of an employment duty to the plaintiff by the defendant and, if a breach of duty is proven, a substantial risk of resignation was reasonably foreseeable having regard to the seriousness of the breach.

[9] In *Wellington Clerical IUOW v Greenwich*<sup>[1]</sup> the Arbitration Court said:

*It is essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the border line which separates inconsiderate conduct causing some unhappiness or resentment to the employee, from dismissive or repudiatory conduct reasonably sufficient to justify the termination of the employment relationship.*

[10] In the absence of a breach of an express term of the employment agreement, a breach of the duty of trust and confidence implied into all employment agreements may be established to reach the threshold of repudiatory conduct. This implied term has been supplemented by s4 of the [Employment Relations Act 2000](#) ("the Act") which requires both employer and employee to act in good faith towards each other. A breach of this statutory duty could also be classified as repudiatory conduct.

[11] The question of whether a dismissal or an action by an employer leading to disadvantage to an employee is justified is determined by the application of [s103A](#) of the Act:

### 103A Test of justification

*For the purposes of [section 103\(1\)\(a\)](#) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.*

[12] The focus is therefore on the actions of the defendant. Did he act towards Mr Ramsay as a fair and reasonable employer would have done in all the circumstances of this case?

## Issues

[13] The plaintiff's pleadings describe his claim very generally:

*The defendant's actions over a period of time but particularly from September 2002 until 12 August 2003 put the Plaintiff in a position where he felt he was in an unsafe working environment, had lost trust and confidence in the Defendant and was placed under considerable stress to the point where he could no longer continue his employment with the Defendant.*

[14] Specific details of his claim are found in his personal grievance letter of 8 September 2003 in which he referred to specific reasons for his application to disengage:

*The following specifics lead to my application:*

*Having been ordered to supply a report to Inspector Gaskin about the competency of Sergeant G R Smith the report was concealed from Inspector Gaskin's supervisor and other staff. I was ordered not to speak with staff about the allegations raised and was therefore isolated and alienated from my peers. Inspector Gaskin conducted a totally separate inquiry and attempted to have me removed from Temuka Station. Over a period of stressful months of attempting to have the inquiry carried out properly a complaint was laid against me with the involvement of Temuka staff.*

*That inquiry was carried out by Inspector Shanks, Inspector Gaskin's immediate subordinate, in an unfair and unprofessional manner with the specific intention of defaming me and removing me from my position at Temuka. These actions have totally destroyed my ability to work within the New Zealand Police.*

[15] The complaint laid against him and referred to in his letter was a complaint made to the PCA by Ms McMillan, a community worker in Temuka.

[16] In closing submissions Mr Fairclough, for the plaintiff, submitted there were eight grounds for constructive dismissal. He acknowledged that these overlapped and some had a more major impact on the plaintiff than others. He referred to them as a chain of events that led to the plaintiff's disengagement.

[17] The statement of claim also alleged in the alternative that the defendant's unjustified actions towards the plaintiff were to his disadvantage and left him with no alternative but to disengage. No separate factual allegations for this alternative claim were pleaded.

[18] The following issues arise from the plaintiff's claim of constructive dismissal:

1. Did the defendant, through Inspector Gaskin, breach the police's implied obligation of trust and confidence when investigating Mr Ramsay's complaint against Sergeant Smith?
2. Was the defendant involved, through his staff at Temuka police station in the laying of the complaint against Mr Ramsay?
3. Did the defendant, through Inspector Shanks, breach the implied obligation of trust and confidence when investigating the complaint about Mr Ramsay to the PCA?
4. If there were breaches did these lead to his decision to resign?
5. Was it reasonably foreseeable to the defendant at the time that Mr Ramsay resigned that he would take this course of action as a result of the breaches?

### **Police General Instructions**

[19] Part of Mr Ramsay's case relates to his criticism of the way his complaint against Sergeant Smith was dealt with by the police. At the time relevant to this case complaints against police officers were reported to the then PCA under the [Police Complaints Authority Act 1988](#)[2]. The Police General Instructions set out the procedure for dealing with complaints. These are administered by the Officer in Charge of Professional Standards at the Office of the Commissioner and prescribe the actions to be taken both in response to complaints against the police and also internal allegations of misconduct and neglect of duty.

[20] A complaint is defined for the purposes of the General Instructions in the following way:

*... the term "complaint" shall refer to any formal allegation of misconduct or neglect of duty by any Police member, or any grievance concerning the practice, policy or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity...*

[21] A complaint is distinguished from an expression of dissatisfaction which means:

*... any request for information, or enquiry or expression of dissatisfaction, which is not intended by the person making the request or enquiry to be received by the Police as a complaint, and which is resolved to the satisfaction of that person by way of explanation. An expression of dissatisfaction is not a complaint for the purposes of these General Instructions.*

[22] Annexed to the General Instructions is a memorandum of understanding (MOU) between the police and the PCA dated November 1994. It has two schedules. The first specifies less serious misconduct and neglect of duty offences that are not notifiable to the PCA as a complaint under the [Police Complaints Authority Act 1988](#) and which do not fall under the complaints procedure in the General Instructions. The second schedule sets out those offences which must be notified to the Authority.

[23] The PCA has jurisdiction over every complaint made against the police either by a member of the public or a member of the police. When a member of the police is suspected of a criminal offence, misconduct, or a neglect of duty this is to be reported to the District Commander who will cause an investigation to be carried out. Where necessary, the District Commander will take action in accordance with the General Instructions or the MOU. Police must notify the PCA about any internally reported allegations made against a police officer only where the allegation is of behaviour under the second schedule such as serious misconduct and serious neglect of duty described.

[24] Roger Honan, an inspector employed in the national office of the Professional Standards section of the police, gave evidence about the operation of Professional Standards and the application of the General Instructions. He said that there is an expectation that all complaints, regardless of their classification, are to be reported to a higher command. The established protocol is that there is an absolute obligation on a police officer to report matters of concern to a superior. An officer cannot commence his own investigation into such matters.

[25] When a complaint is reported the Commissioner of Police may request the PCA to defer its inquiry while a disciplinary or criminal investigation takes place so that evidence gathered is not protected by the privilege which attaches to PCA inquiries.

[26] General Instructions 1A111(1) sets out the general principles for investigations, the relationship between the investigator and the PCA, initial action, complaint investigation procedure, and the completion of the action. These general principles provide at (1)(c):

*The investigation must address not only the substance of the complaint but also any incidental and material matters (i.e. administrative, operational) arising during the course of the investigation. Any necessary remedial action should be reported (eg training, or changes to procedures and systems).*

[27] The General Instructions also deal with poor performance. P929 requires a member's supervisor to obtain and document all relevant facts about the poor performance and interview the member. In the light of that evidence and on the basis of HR advice the supervisor can take a number of different actions ranging from no action to formal counselling to an adverse report or a disciplinary charge.

[28] Finally, regulation 13 of the [Police Regulations 1992](#) is relevant. It reads:

### ***Limitation period for offences***

*A member shall not be charged with an offence after the expiration of 12 months from the date of the act or omission constituting the offence, unless it can be shown that the charge could not reasonably have been proceeded with sooner.*

### **Background facts**

[29] The following is a summary of the facts which are relevant to the issues before the Court. It does not purport to be a full description of every aspect of the evidence given over 2 weeks of hearing and much of which was irrelevant.

[30] Mr Ramsay joined the police in 1978 and was stationed as a constable at Temuka in 1987 where he rose to the rank of senior constable. At the relevant time Temuka was part of the South Canterbury policing area of the Canterbury district, the area commander was Inspector David Gaskin and the District Commander was Superintendent Sandra Manderson.

[31] In 2002 and 2003 there were approximately six staff at the Temuka station. Sergeant Glenn Smith was the officer in charge and therefore Mr Ramsay's supervisor. He was also responsible for two other nearby substations, a one-man station at Pleasant Point and a two-man station at Geraldine.

[32] From time to time police officers worked in other stations in the area, for example Sergeant Smith would relieve as senior sergeant at nearby Timaru and other officers would take over his role at Temuka.

[33] Sergeant Smith had come to Temuka from the Criminal Investigation Branch. He embraced the very different work environment at Temuka and became involved in community projects. He initiated and still chaired at the end of this hearing the Community Care Trust which co-ordinates responses to at-risk youth. The trust employed Jennifer McMillan as a youth and community worker. She was also the victim support co-ordinator at Temuka. She was not a member of the police.

[34] Other staff at Temuka at the time included Constable Coy, who had transferred from traffic to general duties in 1994, and Annette Hewitson, a non-sworn watch house officer since the 1990s.

[35] In the mid-1990s, Ms Hewitson had found Mr Ramsay over-familiar towards her. She told Sergeant Smith about this. He advised her to talk to Mr Ramsay which she did but remained wary of him and avoided contact with him as much as possible from then on even though they worked in close proximity.

[36] Over the 15 or so years they worked together, Sergeant Smith had few issues with Mr Ramsay's work as a police officer and found him to be a good policeman until the last 18 months to 2 years of his employment. On the other hand, Mr Ramsay believes that from about 1999 Sergeant Smith's performance was not satisfactory. In his view Sergeant Smith disregarded police practice when dealing with issues, became progressively lazier in his police work, and treated Constable Coy unfairly.

[37] One particular concern to Mr Ramsay was the allocation of work to officers at Temuka and the substations. In 2001 his frustration about this increased and in 2002 he began checking timesheets submitted by staff in the substations to compare them on an annual basis against his own work load. He established that he was being required to cover Temuka and the substations two and a half times more than anyone else. He submitted a written report on this to Sergeant Smith in May 2002 following which the problem diminished.

[38] Mr Ramsay believes that from that time on there was a subtle change in behaviour towards him by Ms Hewitson. Her partner was Constable Geoff Smith who served in a substation and was one of the officers mentioned in his report.

[39] In 2002 Constable Coy had some work issues at the Temuka Station. Inspector Gaskin had been critical her handling of a case involving a firearm and Sergeant Smith criticised the way she had dealt with a driving incident. In both of these cases Mr Ramsay believed Sergeant Smith had been more or less responsible for the deficiencies for which Constable Coy had been criticised and that Constable Coy's effort and correspondence was better than Sergeant Smith. In his view Constable Coy was being treated differently from other staff.

[40] Mr Ramsay decided to make a complaint about Sergeant Smith's competency. When Sergeant Smith went on extended leave in October 2002 Mr Ramsay began investigating and analysing a number of files which he thought showed an extremely poor standard of work by Sergeant Smith. One of these files concerned a domestic violence incident in which Mr Ramsay identified what he saw as a number of procedural deficiencies. Ms McMillan had been involved in a community diversion arising from the case. Mr Ramsay questioned her about how it and other files had been handled. He queried the payment of monies paid to the Community Care Trust as part of the diversion programme. Mr Ramsay also made enquiries of Linda Gaskin, Inspector Gaskin's wife, who co-ordinated the local Restorative Justice Programme, about how a file had been handled.

[41] While he was on leave Sergeant Smith met Ms McMillan in the street and she told him about these enquiries. On 31 October 2002, Sergeant Smith went to the police station to confront Mr Ramsay. Voices were raised. Sergeant Smith accused Mr Ramsay of trying to fit him up. Ms Hewitson witnessed this and recorded what had occurred in her diary. She noted Mr Ramsay refused to discuss anything with Sergeant Smith but told him that if he reported the matter to Inspector Gaskin it would be taken out of Mr Ramsay's control. Ms Hewitson was shaken by the confrontation.

[42] Sergeant Smith phoned Inspector Gaskin to tell him that he was under investigation by Mr Ramsay. Mr Ramsay believes that after this, when Sergeant Smith realised that Mr Ramsay had compromising material to report to Inspector Gaskin about him, he rang him back and told him not to come to the station.

[43] The evidence about this was far from clear but what is certain is that Sergeant Smith rang Inspector Gaskin on 31 October 2002 to report the incident. It is possible that Sergeant Smith may have rung him back and told him not to come to the station. However that of itself is not evidence that Sergeant Smith was attempting to cover the matter up to protect himself. Sergeant Smith must have known that, once he had alerted Inspector Gaskin to problems at the Temuka station, the Inspector was obliged to inquire further which he did.

[44] Inspector Gaskin rang Sergeant Smith on 1 November and then began his inquiries into why Mr Ramsay was investigating Sergeant Smith.

[45] He made notes which he entered into a job sheet format at a later stage. Significantly he headed up the job sheet, "*Temuka Station Disfunctionality.*"

[46] He first contacted Sergeant Lowrey who was acting as relieving Temuka officer in charge while Sergeant Smith was on leave. Sergeant Lowrey told him that Ms Hewitson had rung in sick the previous week because Mr Ramsay was acting as relieving sergeant and was on day shift. Inspector Gaskin was made aware of the historic issue between Mr Ramsay and Ms Hewitson and directed Sergeant Lowrey to go and speak to Ms Hewitson about this.

[47] Ms Hewitson was guarded with Sergeant Lowrey about Mr Ramsay but agreed to speak to Inspector Gaskin. On 3 November 2002 she rang him to tell him that she would be at work and wished to proceed with a complaint against Mr Ramsay. Inspector Gaskin briefed the Sexual Harassment Contact Officer, Detective Marion Neill. At the same time, Ms McMillan learned that Ms Hewitson was speaking to Detective Neill and decided to raise her own issues about Mr Ramsay.

[48] Mr Ramsay alleges that Inspector Gaskin covered up the fact that it was Sergeant Smith who had advised him of Ms Hewitson's sexual harassment complaint. The evidence of Inspector Gaskin and Sergeant Smith does not support that allegation. I find that Ms Hewitson had told Sergeant Smith 5 years earlier about her perceptions of the way Mr Ramsay was treating her and to this extent he knew that there was an issue between them. However she had never described to Sergeant Smith what happened as sexual harassment and he never considered that what Ms Hewitson had told him earlier was sexual harassment. Inspector Gaskin learned of Ms Hewitson's allegations as a result of his enquiries of Sergeant Lowrey.

[49] Inspector Gaskin interviewed other police officers to find out about Mr Ramsay's investigations about Sergeant Smith. He also spoke to Ms McMillan and to his wife who had told him about being questioned by Mr Ramsay. On 5 November 2002 he visited the out-stations of the Temuka sub area and spoke to staff to find out if Mr Ramsay had been making enquiries there. The records clerk at Timaru advised that Mr Ramsay had reactivated and taken out old files previously dealt with by Sergeant Smith.

[50] In the meantime, outside work hours, Mr Ramsay continued with his enquiries about Sergeant Smith. He visited the Temuka station at 7.00am to withdraw files he believed showed Sergeant Smith's very poor performance and returned after 4.30pm to photocopy the information from the files. He took the photocopies home. He had no official reason to access these files.

[51] On 6 November Inspector Gaskin told Mr Ramsay it was not his role to conduct an investigation into a serving non-commissioned officer and that if he had a complaint he should make it and an investigation would be carried out. He gave him a written report with a direct order to hand the investigation and all the information he had in his possession over to Inspector Gaskin who intended that an investigation into Mr Ramsay's complaints would be conducted. Mr Ramsay complied with this order on 12 November 2002. This initiated the Gaskin inquiry into Mr Ramsay's complaint about Sergeant Smith.

[52] During the Gaskin inquiry into his complaints about Sergeant Smith, Mr Ramsay himself became the target of a complaint. On 20 March 2003 Ms McMillan made a formal complaint about Mr Ramsay addressed to the PCA. Mr Ramsay received it the next day and became so stressed that from 22 March he went on extended sick leave from which he did not return. On 27 March he was offered but refused secondment to a position in Timaru.

[53] On 27 April, Mr Ramsay complained to Police Professional Standards about the way the Gaskin inquiry had been conducted and a review into that complaint was commenced at Police National Headquarters.

[54] On 28 April Inspector Gaskin instructed Senior Sergeant Schwartfeger to carry out rehabilitation meetings with Mr Ramsay as soon as possible. Mr Ramsay had been sent some information on rehabilitation before this. Senior Sergeant Schwartfeger met with him on 1 May 2003 and outlined the rehabilitation policy. Mr Ramsay by then was seeing a police appointed psychologist and his own GP.

[55] Mr Ramsay told the senior sergeant that the limiting factors to him were the PCA investigation and the working environment with the sergeant. They worked through a rehabilitation plan but Mr Ramsay would not consent to his GP providing information on his condition or possible recovery time. Arrangements were made for the police manager to keep regular contact with him.

[56] When the police informed the PCA that they wished to undertake their own investigation into the McMillan complaint the PCA agreed. Inspector Laurence Shanks, stationed at Timaru, was delegated to investigate the McMillan complaint as a criminal/disciplinary inquiry. He reported his findings on 3 June 2003.

[57] On 5 June 2003, on the instructions of the District Commander Mr Ramsay was requested to return the keys to

the Temuka station. Because he refused and required a written order, the locks to the station were changed.

[58] Mr Ramsay applied to voluntarily disengage from the police on 22 June 2003. He also continued to question why his complaint about Sergeant Smith had been dealt with as a performance rather than a disciplinary issue and also complained about the way the Shanks inquiry had proceeded.

[59] Mr Ramsay's disengagement was confirmed on 12 August 2003. On 8 September 2003 he notified the police of his personal grievance for constructive dismissal.

### **Were there breaches of the employment agreement?**

[60] Mr Ramsay alleges that the breaches of his employment agreement were caused by:

1. The manner and outcome of the Gaskin inquiry into his complaint about Sergeant Smith;
2. The way in which the McMillan and Hewitson issues were raised and dealt with including the investigation of the PCA complaint by Inspector Shanks;
3. The manner in which he was offered a seconded position after he took stress leave.

### **1. The Gaskin inquiry**

#### **The facts**

[61] Mr Ramsay's written complaint about Sergeant Smith commenced:

*I wish to bring to your attention serious deficiencies in the performance of duties carried out by Sgt Glen SMITH ...*

*This report is submitted as Ordered by you ...*

[62] The report attached a number of Sergeant Smith's offence reports and burglary folders from 2001. Mr Ramsay was critical of the lack of information and job sheets on these reports and of substandard correspondence. He also listed and analysed seven files on which Sergeant Smith had done inquiries and dealt with the offenders. He pointed out alleged deficiencies in the conduct of these investigations.

[63] Other matters raised by Mr Ramsay in his report were the way Sergeant Smith had carried out his inspections of the Temuka station and the substations and his allegedly poor supervision of staff and the impact of that on Constable Coy's performance. He also alleged that Sergeant Smith had at times neglected his responsibility to the members and was critical of the way Sergeant Smith had carried out the staff performance appraisals for which he was responsible.

[64] Mr Ramsay concluded that the morale at the Temuka station had been at a low level for several years and this related directly to Sergeant Smith. He noted that morale improved when other officers replaced Sergeant Smith when he was away.

[65] In evidence Mr Ramsay said he had not previously formally raised his concerns about Sergeant Smith because it was the police culture that you don't complain about others. He also believed everyone had been aware of Sergeant Smith's poor performance and nothing had been done. He saw his complaint as a way of forcing police to do something about Sergeant Smith.

[66] Inspector Gaskin sent the Ramsay complaint to Inspector Weston of Professional Standards. It was decided that the allegations did not fall within the second schedule of the MOU and therefore it was not a complaint notifiable to the PCA. Inspector Gaskin then commenced an investigation into Mr Ramsay's allegations.

[67] Mr Ramsay later submitted a report about another file he had heard about and regarded as irregular but Inspector Gaskin declined to look into that.

[68] On 11 December 2002, Inspector Gaskin reported to the District Commander. The report contained his job sheets of interviews conducted with police officers in the district. In summary he reported as follows:

- He had checked all police files referred to by Mr Ramsay. Any deficiencies noted had been addressed.
- He could find no discrepancies in the station and substation returns submitted by Sergeant Smith. He could find no deficiencies in the inspections.
- He had obtained a "fairly clear insight" into Sergeant Smith's staff management.
- Sergeant Smith needed to address the area of performance appraisals. There had been a breakdown in the performance appraisal system which Inspector Gaskin acknowledged he should have picked up on earlier. He would monitor Sergeant Smith's performance closely.
- He found it difficult to gain an independent insight into the morale at Temuka Station. He acknowledged there were two different sides, with Mr Ramsay and Constable Coy on one side, supported by two officers. He found that Mr Ramsay's criticisms appeared to be personal against Sergeant Smith, "which has resulted in some deep centred anger or resentment he has against the Sergeant." He noted that members all commented on the support of Sergeant Smith as their supervisor, even those who were seen as aligned to Mr Ramsay.

[69] Inspector Gaskin concluded that the problems at Temuka Station were not with Sergeant Smith but with either Mr Ramsay and his inability to communicate or with Constable Coy. His solution was to recommend placing

Constable Coy under performance management and removing Mr Ramsay from the Temuka station before Sergeant Smith returned from leave as the two officers were in direct conflict.

[70] Subsequent advice from human resources was that Mr Ramsay could not be removed from Temuka without his consent. Human resources advised Inspector Gaskin to meet with Mr Ramsay, manage Sergeant Smith's performance issues, and hold a joint meeting between the two of them focusing solely on the duty of both parties to put their differences behind them for the good of the station.

[71] Inspector Gaskin invited Mr Ramsay and his Police Association representative, Mr Hampton, to a meeting on 28 February to discuss his report. He told Mr Ramsay he was fully confident that Sergeant Smith was performing his duties to the required standard and that none of the matters raised in his complaint caused any concern. He noted that there were three different factions amongst the Temuka staff. Inspector Gaskin asked Mr Ramsay to attend a meeting with Sergeant Smith when he returned to duty.

[72] Mr Ramsay later advised Inspector Gaskin that his investigation should have been into his complaints of serious deficiencies in Sergeant Smith's performance and that his investigations into conceived conflict between Temuka staff was an entirely separate and unrelated matter. Mr Ramsay also sent him a copy of his earlier rostering report.

[73] Inspector Gaskin responded that once Sergeant Smith returned to duty he would mediate a meeting between the two of them to cover aspects of the complaint which were not being dealt with under the performance appraisal system. Low morale was a major problem in the Temuka area and solutions would need to be found. He acknowledged the rostering report which he noted gave him some insight into the depth of Mr Ramsay's feelings and reasons for it.

[74] Mr Ramsay, in response, said that although he had no problem meeting with Sergeant Smith he believed it would not be productive for Inspector Gaskin to mediate because he was Sergeant Smith's immediate supervisor and the mediator should be a trained independent person. He did not resile from his specific complaints against Sergeant Smith. He asked for advice as to whether each of his allegations had been upheld or not upheld and referred for the first time to the General Instructions. He did not agree that some of the matters he had raised should be dealt with under the performance appraisal system.

[75] Inspector Gaskin replied that he had addressed all the matters that had been set out by Mr Ramsay in his "*expression of dissatisfaction*", that he had total confidence in Sergeant Smith's ability to fulfil his role in the community and that he intended to hold a meeting when Sergeant Smith returned.

[76] On 27 April Mr Ramsay wrote to the National Manager of Professional Standards setting out his concerns at the way his complaint about Sergeant Smith had been dealt with by Inspector Gaskin and advising that he would be complaining about another aspect of Sergeant Smith's performance.

[77] When Inspector Chatt received this complaint he filed it in the police filing system known as the document locator system (docloc) as file number 030430/3441. He advised Mr Ramsay that his allegations did not fall under the second schedule of the MOU and that the complaint would be reported back to the District Commander for an internal inquiry to be completed rather than to the PCA.

[78] On 20 May Inspector Weston, the Professional Standards Manager, forwarded this complaint to the area controller of South Canterbury (Inspector Gaskin) asking him to appoint an independent and objective investigator to examine those issues and report within 3 months. Because of Mr Ramsay's existing complaint against Inspector Gaskin and his request for an independent inquiry, Inspector Gaskin immediately returned the file to the Professional Standards Manager and had no further involvement in the review.

[79] Inspector Gaskin's investigation report about Mr Ramsay's complaint was sent to Inspector Weston on 3 June for review. On 8 July Inspector Weston reported to the national manager of Professional Standards supporting the action taken by Inspector Gaskin in dealing with it as a performance matter. He noted that Mr Ramsay was currently applying to disengage pursuant to the Police Employment Rehabilitation Scheme. He recommended that national office review Inspector Gaskin's actions and a copy of Inspector Gaskin's report was sent to national headquarters on 14 August 2003 where it was reviewed by an external reviewer, Inspector Dave Kerr.

[80] Mr Ramsay continued to correspond with Professional Standards at the Commissioner's office. On 15 August 2003 Inspector Honan wrote to Mr Ramsay that he concurred with Inspector Gaskin's opinion that the inquiry was performance oriented and should not be conducted under the General Instructions dealing with discipline.

[81] A final review of all matters relating to Mr Ramsay was done by Judge Lance of the PCA who concurred with the categorisation of the Gaskin inquiry as a performance issue.

## Discussion

[82] The first question is whether the characterisation of Mr Ramsay's complaint as a performance/staff matter and the way in which Inspector Gaskin investigated it gave rise to any breaches of the defendant's employment obligations towards Mr Ramsay to the extent that it could be said to have led to a breakdown in confidence.

[83] Inspector Gaskin's view was that the complaint arose out of the conflict between Mr Ramsay and Sergeant Smith and general staff dysfunction. This was based on the report of the altercation on 31 October and what he had heard of the problems raised by Ms McMillan and Ms Hewitson. He saw Mr Ramsay's investigation and subsequent complaint as an attempt by him to raise performance issues in relation to Sergeant Smith. That was also the

opinion of the District Commander. In the light of that, Inspector Gaskin saw that his role was to determine whether there were such performance issues and to forward his recommendations to the District Commander.

[84] It is Mr Ramsay's case that the way in which the defendant dealt with his complaints breached the defendant's obligations to him and this started the chain of loss of confidence that led to his final disengagement. For the plaintiff, Mr Fairclough submitted that Mr Ramsay's complaint should have been dealt with under the Police General Instructions and the procedure adopted by Inspector Gaskin was in breach of these instructions or in the alternative the investigation was not carried out properly. Mr Ramsay alleges that having been directed by Inspector Gaskin to submit his complaints about Sergeant Smith in writing the Inspector owed him an obligation to carry out a proper investigation.

[85] Specifically Mr Ramsay says that Inspector Gaskin formed a view about the merits of his complaint 6 days before a complaint was submitted to him in writing; that Inspector Gaskin saw the issue from the beginning as one concerning Mr Ramsay and Constable Coy rather than as a substantive complaint about Sergeant Smith. He relies on Inspector Gaskin heading his 1 November job sheet "*Temuka Station Disfunctionality*" and labelling a file "*Ramsay/Coy*" on 6 November 2002 as evidence of this.

[86] Other deficiencies alleged by Mr Ramsay are that Inspector Gaskin had portrayed his complaint as one from a disgruntled constable about his sergeant; that he failed to record any communications with Sergeant Smith throughout the investigation, that he interviewed other members rather than speaking first with Mr Ramsay about the basis of his inquiry; that he failed to take notes of a large number of interviews, and that he focused on collecting negative information about Mr Ramsay and Constable Coy and then used the information to validate conclusions he had already reached. He also alleges that Inspector Gaskin attempted to cover up Mr Ramsay's complaint against Sergeant Smith from the beginning by failing to enter the complaint in the police filing system known as the docloc system. That is disputed by the defendant.

[87] The facts are that an Official Information Act request by Mr Ramsay in May 2005 for information about the investigation disclosed that on 5 June 2003 Inspector Gaskin had docloc'd his investigation file into Mr Ramsay's complaints for the first time. This created a computer generated number for his investigation to allow the identification and audit of the file. Inspector Gaskin explained that he did this at that stage because his investigation was complete and the matter had the chance of being a "*long term situation*". The file number generated was 030605/1848.

[88] In the plaintiff's submission, the significance of these different file numbers is that when all the Ramsay matters were looked at by an external reviewer, Inspector Dave Kerr in September 2003, he cited the file number 030430/3441 which was the Professional Standard's file number and not the number generated for Inspector Gaskin's file. Mr Fairclough submitted that Inspector Kerr's conclusion that Inspector Gaskin had dealt with the matter properly was based on incomplete information because it is highly probable that he did not see Inspector Gaskin's original investigation file. I do not accept that submission. I am satisfied that Inspector Weston had a copy of the Gaskin investigation report when he reviewed the file and that it was sent to Inspector Kerr who was fully aware of all relevant matters when he reviewed all the files.

[89] I find that the Police General Instructions were not applicable in this case. The MOU annexed to those instructions gives the District Commander responsibility for characterising a complaint against a police officer. As the nature of Mr Ramsay's complaints against Sergeant Smith were not criminal and were not offences of misconduct or neglect of duty as defined in the second schedule to the MOU, I find that the District Commander's decision about this which was subsequently confirmed by Police Professional Standards and the PCA was reasonable in all the circumstances.

[90] I do not accept that Inspector Gaskin pre-determined his findings about Mr Ramsay's complaint. These were not received by him in writing until 14 November. Up to then Inspector Gaskin had been quite properly reacting to Sergeant Smith's concerns about Mr Ramsay's covert investigation into him. Those concerns prompted him to make his initial enquiries. The only substantive matter that I find Inspector Gaskin determined before receiving Mr Ramsay's complaint was that Mr Ramsay had been acting improperly in accessing files which had nothing to do with him and conducting a private investigation into a superior officer.

[91] Once Inspector Gaskin received Mr Ramsay's formal complaint he then investigated each of the matters raised in it. He found some evidence of deficiencies in the way some of the files had been dealt with, investigated those and found that the deficiencies had been remedied. Importantly, he accepted Mr Ramsay's allegation that the performance management system was not working under the guidance of Sergeant Smith and put in place procedures to rectify that. This does not support Mr Ramsay's allegation of predetermination.

[92] Mr Ramsay's criticism of the standard of Inspector Gaskin's inquiry is also misplaced. This was not a criminal investigation but quite properly a review of a clearly dysfunctional situation at the Temuka police station. It was an investigation into Mr Ramsay's allegations of poor performance by Sergeant Smith. As such, it did not warrant the formality now demanded by Mr Ramsay.

### **Conclusion on Gaskin inquiry**

[93] I conclude that Inspector Gaskin's inquiry did not fundamentally breach the police's obligation of trust and confidence of good faith to Mr Ramsay. I also find that the way the file was docloc'd is not evidence of a conspiracy

to hush up the inquiry by Inspector Gaskin. He was not conducting a criminal investigation. He was trying to keep the matter where he thought it properly belonged – domestic matter to be dealt with at a local level.

[94] In any event, at all times Professional Standards was fully aware of Mr Ramsay's complaint against Sergeant Smith and also aware of Inspector Gaskin's investigation when it reviewed Mr Ramsay's second complaint about the conduct of the investigation.

[95] The investigation of Mr Ramsay's complaint about Sergeant Smith was carried out in accordance with Police Professional Standards. The District Commander determined that the investigation was not disciplinary and was to be conducted under the MOU. In the light of the allegations made by Mr Ramsay this decision was reasonable and was in accordance with police procedure in dealing with allegations of poor performance.

[96] Inspector Gaskin's inquiry was appropriately conducted. He reasonably concluded on the basis of the events of 31 October and early November that there was an issue between staff at the Temuka police station and sub area stations. That was confirmed when he received Mr Ramsay's formal report on 14 November. During his investigation of that complaint, he spoke formally and informally to all concerned and reached the conclusion that Sergeant Smith needed to improve the way he conducted performance management. He tried to arrange a conciliation between Mr Ramsay and Sergeant Smith but this was resisted by Mr Ramsay who took the inflexible position that it should be treated as a complaint and be subject to disciplinary procedures.

[97] Before Inspector Gaskin could take any further steps to resolve the conflict between Mr Ramsay and Sergeant Smith, Mr Ramsay had gone on leave and did not return.

[98] Inspector Gaskin's decision to deal with the matter in this way was reviewed by Inspector Honan, Inspector Chatt, and Inspector Kerr all of whom found that he had acted correctly and appropriately. This was reaffirmed by Judge Lance of the PCA.

## **2. The McMillan/Hewitson complaints**

[99] By the end of 2002 Ms Hewitson was finding it difficult to cope with Mr Ramsay's behaviour. She realised he was investigating Sergeant Smith, his files, and his timesheets. Ms Hewitson also witnessed and was shaken by the altercation between Mr Ramsay and Sergeant Smith on 31 October to the point that she felt like taking time off work.

[100] Ms Hewitson spoke to her partner, Constable Geoff Smith, about whether Mr Ramsay's attitude to her might be classed as sexual harassment and after that decided to take some action. Her evidence was that she did not speak to Sergeant Smith before making her complaint. She said that on 4 November 2002 she went to talk to Detective Neill, the Sexual Harassment Contact Officer, on her own initiative and refuted the suggestion that she wanted to hide Inspector Gaskin's and Sergeant Smith's involvement in the sexual harassment complaint.

[101] Inspector Gaskin said that she had rung him to tell him she wanted to proceed with a sexual harassment complaint. He then briefed Detective Neill to speak with her. Detective Neill also recorded that she met with Ms Hewitson as a result of verbal information from Inspector Gaskin. I find that after 7 years Ms Hewitson's memory is understandably faulty and the evidence of Inspector Gaskin supplemented by Detective Neill's notes are more reliable. However, Inspector Gaskin did not try to hide his involvement in this matter and there is no evidence of covert collusion between Ms Hewitson, Sergeant Smith and Inspector Gaskin to have her complaint about Mr Ramsay dealt with.

[102] Ms Hewitson said that she never intended to make a sexual harassment complaint and talking to Detective Neill was more about getting things off her chest as well as a safeguard for herself in case something happened to her while she was alone with Mr Ramsay. She acknowledged that Mr Ramsay's behaviour was of a minor nature but she just wanted it recorded and made no formal complaint. She also expressed a lack of faith in the complaint being dealt with appropriately by the police. She predicted that it would turn out to be more trouble than it was worth.

[103] Although not a member of the police, Ms McMillan worked closely with police officers in her role as Victim Support Coordinator and in her work with programmes for at-risk youth offenders. She was also available to discuss personal problems with any of the police when they required support. Police officers would visit her at home on a friendly basis. Mr Ramsay was one of those and developed an affection for Ms McMillan which he expressed in a letter to her in the mid to late 1990s. She returned that letter to him and told him she did not have feelings for him. He continued occasional visits and they remained on what he believed were reasonably friendly terms. She attended his marriage to his second wife in 2000 and gave them a personal gift. After the marriage they exchanged some visits.

[104] In August 2001 he sent her a joke birthday card with sexual overtones which she found offensive. She immediately showed it to another constable but decided not to tell Sergeant Smith in case he wanted to get her and Mr Ramsay together to sort it out. She also showed it to a close friend and her children and shredded it after showing it to Ms Hewitson. Sergeant Smith subsequently found out about the card but Ms McMillan told him she would sort it out herself. From early 2002 she gave Mr Ramsay the cold shoulder and avoided his attempts to visit her.

[105] Ms McMillan became increasingly concerned about Mr Ramsay's behaviour. She believed he had interfered in a case handled by a social worker and, on one occasion when Ms McMillan was at the Temuka police station

discussing a client with another constable, Mr Ramsay intervened so loudly that Sergeant Smith came out to tell him to calm down.

[106] In 2002 Mr Ramsay began asking her about the way some police files had been handled, in particular about money donated to the Community Care Trust through the diversion scheme. Because she believed these questions concerned Sergeant Smith who was her supervisor and the chairman of the trust Ms McMillan told him that Mr Ramsay was asking for information.

[107] About that time Ms McMillan found out that Ms Hewitson was going to speak to Detective Neill and decided to speak to Detective Neill as well. On 4 November 2002, she told her about the card and the visits from Mr Ramsay which had ended when she moved residence in April 2002. Ms McMillan did not make a formal complaint at that time.

[108] In March 2003 Ms McMillan went to see Sergeant Smith while he was on extended leave. Her first visit was to express her annoyance with Constable Coy about comments she had made about the At Risk Youth Programme. On the second visit she took a letter written by her addressed to the PCA for him to read. Sergeant Smith read it but said he did not want anything to do with it as he did not want to be seen to be stabbing Mr Ramsay in the back. He told Ms McMillan to go and seek advice elsewhere. He told the Court of his dilemma. He said, *"I mean I could hardly tell her don't go and not complain to the PCA. I mean I was between a rock and a hard place. I didn't want to see Bruce [Ramsay] get in the cart for his behaviour."* Sergeant Smith recommended that she speak to Mr Wood, the deputy principal at the high school who was Ms McMillan's external supervisor.

[109] Following discussions with Mr Wood Ms McMillan lodged her complaint with the PCA without further reference to Sergeant Smith. It was put to Inspector Gaskin and Ms McMillan that she had spoken to Inspector Gaskin before putting in the complaint and that he had advised her to notify the PCA. I am satisfied from their responses that Ms McMillan did not discuss the sexual harassment claim with Inspector Gaskin before it was lodged. I accept Inspector Gaskin's evidence that although he did speak to her at that time it was about her involvement with one of the files that Mr Ramsay had been looking into.

[110] The police commenced a formal investigation into Ms McMillan's complaint. It was referred to Inspector Gaskin who in turn delegated the investigation to Inspector Shanks. The PCA deferred its investigation pending the criminal/disciplinary inquiry by Inspector Shanks.

[111] On 1 April 2003 Inspector Shanks interviewed Ms McMillan and took a statement from her which she reviewed and later signed. He also interviewed a number of other police officers and Ms Hewitson. In the course of those interviews, a number of officers referred to difficulties with Mr Ramsay.

[112] Throughout this inquiry Mr Ramsay was on sick leave. Inspector Shanks advised him when he had spoken to everyone and said he would talk to him whenever he was ready. It was left to Mr Ramsay's lawyer to arrange that.

[113] Mr Ramsay's lawyer then sought a copy of the original complaint and information about the investigation. Inspector Shanks took advice and released all documents to the lawyer except those with information given in confidence. This included information from and about Ms Hewitson. In the accompanying letter he pointed out the age of the incidents. The significance of this is that there was a time limit of 12 months for the commencement of disciplinary proceedings against a police officer.<sup>[3]</sup>

[114] Mr Ramsay's lawyer at the time was critical of the way the investigation had been undertaken. He said it had gone beyond the scope of the original sexual harassment claim and that signed statements had not been received from witnesses.

[115] On 8 May 2003 Inspector Shanks explained to Mr Ramsay's lawyer that the complaint was not one of sexual harassment. He reiterated that his investigation had been concluded 3 weeks earlier and he was waiting for advice about Mr Ramsay's interview. If none was forthcoming he said he would report to the PCA.

[116] Later, having spoken to Mr Ramsay in person, Inspector Shanks concluded that he was not interested in being interviewed although Mr Ramsay told him he would be submitting some paperwork. Inspector Shanks then wrote a report dated 28 May 2003 to Inspector Gaskin in which he concluded the McMillan complaint should be upheld. In spite of this, he suggested that nothing official needed to be done about the letter and the card sent to Ms McMillan as both occurred more than 1 year before. He considered the letter was unwise and the card inappropriate. He found the evidence of the social visits disturbing but no action was to be taken apart from cautioning Mr Ramsay about repeating that behaviour.

[117] Inspector Shanks was in no doubt that if it had not been for Mr Ramsay's investigation into Sergeant Smith Ms McMillan would not have made a complaint. He could find nothing to substantiate Ms Hewitson's concerns and put them down to Mr Ramsay's personality.

[118] On 18 June 2003, just before applying to disengage, Mr Ramsay wrote directly to the PCA. He said he had no faith in the South Canterbury police to fairly investigate the matter. He enclosed his response to the McMillan complaint and advised he was ready to be interviewed.

[119] Meanwhile, Mr Ramsay had applied to the Ombudsman to review the disclosure of personal information he had sought from the police in relation to all matters then in issue. Mr Ramsay also conducted a voluminous correspondence with the police. For example, on 20 August 2003, after he had disengaged, he sent three separate letters to the District Commander at Canterbury and another letter to Inspector Honan pointing to errors of detail in their correspondence and requiring explanation about the way his concerns had been dealt with to date. Similar correspondence to the Commissioner of Police and to the Ombudsman continued through September.

[120] On 12 September 2003 Inspector Kerr, the external reviewer, reported on the McMillan complaint. He noted that Mr Ramsay had declined to be interviewed because he was on stress leave and at that time he was applying to disengage pursuant to the Police Employment Rehabilitation Scheme. He suggested that the file be held until disengagement was complete or Mr Ramsay was fit to be interviewed. This report appears to have been written a month before it was released which was before Mr Ramsay's disengagement.

[121] On the same day Inspector Kerr reported on the conduct of the inquiry into Mr Ramsay's complaint against Sergeant Smith. He noted that the file had not been notified to the PCA because the complaint did not constitute serious misconduct and as it was a performance issue was more appropriate for the management of the Canterbury district rather than Professional Standards in Wellington.

[122] On 17 March 2004 Mr Ramsay formally complained to the PCA about the Shanks investigation and on 15 April 2004 formally complained to the PCA about the Gaskin inquiry. He had by then made 12 Official Information Act requests which were being investigated by the Ombudsman and six Official Information Act requests were being investigated by the Privacy Commissioner.

[123] Inspector Shanks's report was submitted to Inspector McKay of Professional Standards who was tasked to review all of the Ramsay matters, including the McMillan complaint. Inspector McKay reported to the PCA on 29 August 2006 recommending that none of Mr Ramsay's complaints nor Ms McMillan's complaint be upheld.

[124] By April 2007 the police file had been received by the PCA and was subject to an independent review. There had been delays in getting the files to the PCA because of the information requests by Mr Ramsay which held up the files in the Privacy Office, the offices of the Police Commissioner and the Ombudsman. Mr Ramsay entered into correspondence with the PCA to clarify the matters before it and on 27 February 2008 Judge Lance of the PCA reported to the Commissioner of Police.

[125] Judge Lance agreed with Inspector McKay's recommendations that the complaint against Mr Ramsay be cleared as not upheld. In relation to Mr Ramsay's complaint about the way in which the police investigated the McMillan complaint he stated:

*It would not have been satisfactory for the Police to dismiss her complaint without an investigation; and the scope of the investigation was in my view necessarily broad given the range of issues. ... The Police, on the strength of the concerns raised by the complaint were in my view duty bound to enquire into the matters.*

[126] The PCA file was then closed. Mr Ramsay was subsequently advised of the outcome.

## **Conclusion on McMillan complaint**

[127] Mr Ramsay alleged that the McMillan complaint was malicious, made with the collusion of persons employed by the New Zealand police with the specific intention of having him removed from the Temuka station. He made three specific allegations against the defendant about the McMillan complaint:

- (a) That the defendant through Sergeant Smith and others was involved in the bringing of this complaint made by Ms McMillan as well as Ms Hewitson's allegations.
- (b) The way in which the McMillan complaint was notified to Mr Ramsay was in breach of the defendant's obligations of trust and confidence.
- (c) The investigation of these complaints was in breach of police General Instructions and/or the sexual harassment policy or otherwise was not carried out properly.

### ***a) Involvement of the defendant in these complaints***

[128] The plaintiff alleges that Ms Hewitson's approach to Detective Neill and Ms McMillan's complaint were encouraged or promoted by Sergeant Smith or other police officers and that the involvement and/or knowledge of Sergeant Smith and Inspector Gaskin as the plaintiff's superiors in relation to the complaints resulted in a breach of the defendant's duty to Mr Ramsay.

[129] I find that Ms Hewitson, motivated by her dislike of Mr Ramsay was prompted by her loyalty to Sergeant Smith and the altercation on 31 October to raise her concerns about Mr Ramsay of her own accord. She took advice from Inspector Gaskin about how to do this. He properly referred her to Detective Neill. Ms Hewitson wanted to keep her concerns confidential but I find there was no attempt by Inspector Gaskin or Detective Neill to disguise their contact with her about this.

[130] In any event Ms Hewitson did not lay a formal complaint and there were no adverse professional consequences to Mr Ramsey from her talking to Detective Neill.

[131] The plaintiff alleges that it is an inescapable inference from the evidence that Ms McMillan and Sergeant Smith were complicit in her complaint against Mr Ramsay. The possibility of this was noted during the inquiries that followed and the timing of her complaint, the day after Mr Ramsay initiated his complaint against Sergeant Smith, certainly appears more than coincidental.

[132] I have considered the factors alleged by the plaintiff which he says gives rise to the inference he relies on. I find that Ms McMillan's motivation in bringing the complaint arose from her own dislike of Mr Ramsay. She certainly took advice about procedure from Inspector Gaskin and tried to involve Sergeant Smith in the formal

complaint to the PCA but he wisely resisted this and referred her to another person.

[133] Sergeant Smith had known for some years that Ms McMillan was unhappy about Mr Ramsay but there is no evidence to support the allegation that Sergeant Smith persuaded her to bring a formal complaint. It is clear that Ms McMillan wanted to get rid of Mr Ramsay because of his general behaviour and in particular his enquires about Sergeant Smith however as she was not a member of the police any action by her cannot be seen as a breach of the duty by the police towards Mr Ramsay.

[134] Having heard the evidence of Sergeant Smith I am satisfied that while he was troubled by Mr Ramsay's attack on him he was not focused on removing him from the police or permanently from Temuka but looked to resolving the issues between them.

[135] Inspector Gaskin certainly and quite reasonably wanted to solve the problem by having Mr Ramsay work other than in the Temuka police station because he could see no other solution to the problems that had arisen but there was no suggestion that either officers wanted Mr Ramsay to leave the police force altogether or took any steps to encourage this. As it was he accepted advice that Mr Ramsay could not be moved without his consent. I am not satisfied that there was collusion between them or either of them with Ms McMillan to bring a complaint against Mr Ramsay with the purpose of having him leave the police.

#### ***b) Notification of McMillan complaint to Mr Ramsay***

[136] It is alleged by the plaintiff that Inspector Gaskin advised Mr Ramsay of Ms McMillan's complaint in a manner which was deliberately designed to achieve maximum negative effect on him. The effect was to trigger stress leave.

[137] Inspector Gaskin received the McMillan complaint on 21 March 2003 and immediately wrote to Mr Ramsay. Inspector Gaskin knew that Mr Ramsay was on duty at that time and called at the station to give him the letter but he was not there. Inspector Gaskin did not try to contact Mr Ramsay and left the letter in his in-tray. When Mr Ramsay returned to the station he saw the letter which appeared to have been sealed but was now open. When he read the contents he said it was like being hit in the face with a piece of 4 x 2. The shock was immediate and severe and he was not offered the chance to have a sexual harassment contact officer or welfare officer to support him when he received the complaint. He also believed that Ms Hewitson, who he had seen hurriedly leaving the station when he arrived, was aware of the contents of the letter.

[138] Mr Ramsay is critical of the way in which Inspector Gaskin framed the allegations in the letter. The complaint was referred to as one of sexual harassment although Ms McMillan had not described it as such. Mr Ramsay also thought that Inspector Gaskin's references to a sexually explicit document and nocturnal visits made it sound extremely sinister. Had the behaviour been described as harassment involving a birthday card and unwelcome social visits it would have had a far more limited effect on him. As a result of reading the letter, the next day he went on a week's sick leave. On that day he also contacted the police welfare officer and was referred immediately to a police psychologist.

[139] I accept that Mr Ramsay was deeply shocked when he received Inspector Gaskin's letter advising him of the McMillan complaint. Although in hindsight it would have been more sensitive of Inspector Gaskin to have waited until he had the opportunity to hand his letter directly to Mr Ramsay it is unlikely that this would have significantly diminished his shock. It would also have been more thoughtful if Inspector Gaskin had attached a copy of Ms McMillan's original complaint to his letter rather than reframing it in his own words. However, neither of these matters is sufficiently serious to amount to a breach of the duty of trust and good faith by Inspector Gaskin and there is no evidence that Inspector Gaskin acted with any intent to deliberately upset Mr Ramsay. Any police officer receiving notice of a complaint to the PCA would understandably be extremely upset by that.

#### ***c) The investigation of the McMillan complaint***

[140] The plaintiff has a number of criticisms of this investigation. It was submitted by Mr Fairclough that Inspector Shanks's investigation fell far short of a proper investigation to uncover the truth and was in breach of the defendant's obligation to the plaintiff. It was submitted that Inspector Gaskin could have intervened to stop the inquiry being elevated to a criminal or disciplinary inquiry when the complaint first came in because of his knowledge that the allegations were historic and probably of a minor nature.

[141] I find that if Inspector Gaskin had intervened as suggested he ran a real risk of being criticised for interfering with the inquiry and acting to protect a fellow police officer. As the PCA subsequently concluded, the police were duty-bound to investigate the complaint properly.

[142] Similarly, it is the plaintiff's case that, when Inspector Shanks began his inquiry, he was aware that the letter complained of was 6 to 7 years old, that the card had been sent by Mr Ramsay in 2001, and that Mr Ramsay had visited Ms McMillan only once since April 2002 when he had not been invited in. From this he would have known that the complaints were outside the 1-year time limit for inquiries into disciplinary matters and in light of that knowledge, Inspector Shanks should not have taken the investigation any further instead of embarking on a "*wide ranging and negatively destructive investigation that was unnecessary.*"

[143] The plaintiff also alleges that Inspector Shanks ignored the positive social contact between the Ramsays and Ms McMillan and only recorded negative comments about Mr Ramsay even those which were not relevant to the

McMillan complaint and did not challenge their accuracy.

[144] The plaintiff is critical of the fact that Inspector Shanks did not speak to Constable Coy, a former friend of Ms McMillan and who would have had relevant evidence and did not cross-examine Ms McMillan on discrepancies between her letter of complaint and her later description. Therefore his investigation fell short of a proper investigation to uncover the truth.

[145] Underlying these criticisms is Mr Ramsay's belief that Inspector Shanks wanted to elevate a minor matter to the point where the PCA would take notice of it. This included accepting Ms McMillan's description of the card sent to her by Mr Ramsay in a manner which, in counsel's submission, was designed to create the impression that the card was more sexually suggestive than was the case.

[146] Finally, when Inspector Shanks's job sheets were disclosed to the plaintiff's barrister on 23 April 2003, certain information was withheld from that including Inspector Shanks's conclusion that he did not accept Ms Hewitson's allegation about Mr Ramsay's behaviour towards her. It was submitted that had he received that information Mr Ramsay would have realised that there was no substance to the Hewitson sexual harassment complaint and by inference would not have had the same effect on him.

[147] I find that Inspector Shanks's investigation was governed by the Police General Instructions. Whatever the apparent merits on the face of the complaint, his responsibility was to investigate it. The limitation period in regulation 13 of the [Police Regulations 1992](#) is not absolute and a proper investigation was required to establish when the acts complained of occurred.

[148] Inspector Shanks did not have the benefit of talking to Mr Ramsay before reaching his conclusions in spite of efforts to do so. I accept that Mr Ramsay was suffering from stress at the time but he had legal assistance and support from the Police Association. He could reasonably be expected to have given Inspector Shanks at least a written statement putting his side of the story including those matters he now accuses Inspector Shanks of overlooking such as the positive social contact between Mr Ramsay and Ms McMillan and alleged discrepancies in Ms McMillan's account.

[149] I find that Inspector Shanks acted appropriately and in accordance with police procedure in undertaking a full investigation. He breached no duty to Mr Ramsay in doing so.

[150] Although Mr Ramsay was deeply suspicious of Inspector Shanks's motives in investigating the McMillan complaint, there was no evidence that the Inspector was motivated by anything other than his delegation to investigate the complaint. Although he recommended it be upheld he also recommended no action be taken on it against Mr Ramsay. Subsequently the PCA found the complaint was not upheld. Mr Ramsay was vindicated by this outcome and no injustice or breach of his terms of employment occurred in the course of the inquiry.

### ***3. The offer of a secondment***

[151] Shortly after Mr Ramsay went on sick leave Inspector Gaskin arranged for Mr Ramsay to be contacted to see if he would consider being based in Timaru on a short-term assignment. Inspector Gaskin needed someone with experience who could work independently on a project and thought Mr Ramsay would be suitable to deal with it. Inspector Gaskin did not want to contact Mr Ramsay while he was on sick leave but needed confirmation of someone for the role before Mr Ramsay was due back to work the next week. Sergeant Lowrey delivered a written secondment to Mr Ramsay at home. He reported back that Mr Ramsay was not in a fit state. When Mr Ramsay had been given the secondment document, he lost control and was in tears. He later rang the police welfare officer to discuss his situation.

[152] Mr Fairclough submitted that it was both insensitive and inappropriate to send Sergeant Lowrey out with the secondment and while it might not seem a major event it was a link in the chain of increasing stress leading to loss of confidence on the part of the plaintiff in the defendant. In his submission, it was reasonably foreseeable that directing that action would have exacerbated the situation, and to that extent, constitutes another breach of duty.

[153] I do not accept that submission. While Mr Ramsay was distressed when he was approached about the secondment it is necessary for him to show that that stress was caused by a breach of duty by the defendant.

[154] I find that the offer of a secondment was an attempt by Inspector Gaskin to find a position for Mr Ramsay upon his expected return from sick leave which would remove him temporarily from Temuka so that the situation between him and Sergeant Smith could be resolved.

[155] While Mr Ramsay saw the offer of secondment in a negative light, objectively viewed I find it showed a willingness by the police to attempt a solution to the difficulties facing Mr Ramsay in a way which kept him employed by the police but removed him for a short time from Sergeant Smith who was the source of his stress.

[156] I conclude that there was no breach of duty by the police by offering Mr Ramsay a temporary seconded position and no other breach of the implied term of trust and confidence in the employment agreement between Mr Ramsay and the police.

[157] In summary I hold that the plaintiff has not proven that there was any breach of his employment agreement in the course of the Gaskin inquiry or in the raising and investigation of the McMillan and Hewitson matters or by the way in which he was offered the seconded position.

[158] That leaves the question of what motivated Mr Ramsay to resign.

## **Did a breach lead to Mr Ramsay's decision to resign?**

[159] I find that Mr Ramsay resigned not because of any breach of his employment agreement but because of his frustrations that the defendant did not regard his criticisms of Sergeant Smith in the same way that he did. He could not accept that they were performance issues or that his behaviour contributed to the unhappiness at the Temuka police station. In fact Inspector Gaskin upheld part of his complaint and took steps to rectify the serious issue of performance reviews. He was also deeply disturbed to receive the McMillan complaint.

[160] Mr Ramsay undoubtedly lost trust and confidence in the police but that was not caused by any breach of the defendant's duty to Mr Ramsay and I conclude he was not induced to resign because of a breach.

## **Was his resignation reasonably foreseeable?**

[161] I find that it was not the intention of the defendant that Mr Ramsay should resign from the police. Some officers interviewed by Inspector Gaskin told him that no one wanted him at the Temuka station but it was suggested that he should be acting sergeant at Timaru. Inspector Gaskin also wanted him moved to Timaru. The offer of the temporary secondment to Timaru on 25 March 2003 shows that the defendant was looking to place him elsewhere while his issues with Sergeant Smith were resolved. There was no evidence to prove they wished to encourage him to resign from the police. Active steps were also taken to help him with his rehabilitation although Mr Ramsay disengaged from this process.

## **Other Matters**

[162] There were some other incidents which the plaintiff says added to his stress although not originally alleged as grounds for his constructive dismissal. Of these, Mr Ramsay was particularly aggrieved by the changing of the locks at the Temuka police station.

[163] Superintendent Manderson, District Commander, was aware of the Gaskin and Shanks inquiries and some of the background to the problems with Mr Ramsay and Constable Coy. She knew Mr Ramsay had gone on stress leave. In June 2003, when she called into the Temuka Station, she was told by the Senior Constable that Mr Ramsay had been accessing the station outside hours even though he was on extended sick leave for stress.

[164] The station had a store of firearms including hand guns and there was some concern that because of his state of mind (witnessed by Sergeant Lowrey for example) Mr Ramsay should not have had access to the station. Superintendent Manderson immediately decided to get the keys from Mr Ramsay and, as he was closely associated with Constable Coy, decided to ask her for her keys as well.

[165] An officer phoned Mr Ramsay and required him to hand over the keys to the station. Mr Ramsay refused and asked for the order to be made in writing. When the Superintendent was advised of this, she gave the order to change the locks to the Temuka station the same day.

[166] Mr Ramsay was subsequently told the keys were required for relieving police officers but Superintendent Manderson said this was not the main reason. She was concerned for Mr Ramsay's safety because he was on stress leave and there was potential for him to get access to the guns outside working hours. She did not invoke a legal process to stand Mr Ramsay down so that he could not access the station but acted to avoid the potential risk of his accessing the guns.

[167] I find that, given that Mr Ramsay was on long term leave and was not restricted from entry to the station during the day, he had no legitimate reason to access the station after hours. The decision to change the locks when he effectively refused to hand over his keys was reasonable in all the circumstances at the time and not in breach of the defendant's obligations to Mr Ramsay.

[168] I accept that Mr Ramsay was upset by this event but he could have avoided the formal order by relinquishing his keys when required.

[169] Mr Fairclough submitted that the defendant also breached its duty to address rehabilitation at an early stage with Mr Ramsay when it might have been more effective to the point where he would have remained in his employment. I note this was not a ground of his original personal grievance.

[170] The evidence is that notwithstanding the attempts to engage Mr Ramsay with the rehabilitation programme, Mr Ramsay had already made some steps towards disengaging from the police. On 29 April 2003 he had requested a calculation of his Government Superannuation Fund lump sum entitlement and on 9 May he requested a disengagement pack. On 14 May 2003 he advised his welfare officer that he would not attend any further rehabilitation as he was intending to disengage.

[171] Mr Ramsay's GP noted on 16 May 2003 that Mr Ramsay had decided to leave the police force. They discussed the police rehabilitation police form which the doctor was to fill out but Mr Ramsay felt the form was now irrelevant and did not have him fill it out.

[172] This evidence points to Mr Ramsay having decided to disengage regardless of any attempts the police were prepared to make on his behalf to rehabilitate him.

[173] However, I do not accept the defendant's submission that Mr Ramsay had been planning to disengage for some time. I am satisfied that Mr Ramsay was a devoted police officer who wished to remain with the police as long as possible but felt driven to disengage particularly once the complaint to the PCA was made. Unfortunately

this was a premature decision on his part. Ultimately he was vindicated. The McMillan complaint was eventually not upheld and no action was ever recommended against him in relation to it.

[174] Mr Martin submitted for the defendant that throughout the period October 2002 until 12 August 2003 when he disengaged from the police there were numerous opportunities for Mr Ramsay to choose options that did not require him to leave the police.

[175] Between October 2002 and March 2003, instead of undertaking a private investigation into Sergeant Smith he could have reported his concerns to his superior officer and even laid a complaint against him with the PCA. Instead, he chose to undertake his own inappropriate investigations.

[176] Between 18 March 2003 and 16 May 2003, Mr Ramsay rejected the option of undertaking mediation with Sergeant Smith; he would not take the seconded position offered to him; he did not provide medical information to assist with his rehabilitation and did not participate in the Shanks inquiry into the McMillan complaint. By 14 May 2003 he had decided not to attend any further rehabilitation as he was intending to disengage.

[177] In the period 17 May to 12 August 2003, he did not wait for the outcome of the investigations into his complaints about Sergeant Smith and Inspector Gaskin and decided on 28 May 2003 he was not going to return to the police. He therefore made a premature decision to leave. He also had an option to remain on sick leave until 2004 rather than disengaging which he chose not to take.

[178] There is merit in those submissions. Even if the police were in breach of any of their employment obligations to Mr Ramsay (and I find they were not), Mr Ramsay did nothing at all to mitigate his position by taking these opportunities. For those reasons I find his disengagement from the police was driven by his own choices and not by breaches of the defendant's obligations towards him.

## Conclusion

[179] The plaintiff's claim for constructive dismissal is dismissed. The defendant did not breach any express or implied terms of the employment agreement between him and Mr Ramsay.

[180] In relation to the alternative claim for unjustified dismissal, I conclude that the defendant acted at all times as a fair and reasonable employer in all the circumstances and that any disadvantage suffered by Mr Ramsay was not the defendant's responsibility.

## Costs

[181] Because of my impending retirement there is no time for me to decide any issues as to costs. If the parties are unable to reach agreement on costs the matter may be decided by another Judge.

**Coral M Shaw**

**JUDGE**

Judgment signed at 1.30pm on 11 June 2009

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[1] (1983) ERNZ Sel Cas 95, 104

[2] Now renamed the [Independent Police Conduct Authority Act 1988](#)

[3] [Police Regulations 1992](#) reg 13.