

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Janice L. leMaistre
Madam Justice Anne M. E. Turner

BETWEEN:

<i>HIS MAJESTY THE KING</i>	)	<i>A. C. Smith and</i>
	)	<i>L. Campbell</i>
	)	<i>for the Appellant</i>
(Respondent) Appellant)	
	)	<i>A. S. Pinx and</i>
	)	<i>J. S. Brar</i>
- and -	)	<i>for the Respondent</i>
)	
<i>SING CHEUNG CHAN</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
	)	<i>January 10, 2025</i>
(Accused) (Appellant) Respondent)	
	)	<i>Written reasons:</i>
	)	<i>January 22, 2025</i>

CAMERON JA (for the Court):

[1] The accused was convicted of the charge of assault peace officer for having assaulted a public health inspector (the health inspector) after a trial in Provincial Court. He appealed his conviction to the summary conviction appeal judge who allowed the appeal, set aside the conviction and entered a conviction for the charge of assault. The summary conviction appeal judge then reduced the length of the conditional discharge and supervised probation order imposed by the trial judge from fifteen months to thirteen months and deemed that sentence to have been served.

[2] The Crown appealed the decision of the summary conviction appeal judge. At the hearing of the appeal, we allowed the appeal, restored the conviction for assault peace officer and restored the sentence imposed by the trial judge with reasons to follow. At the invitation of the Crown, we also stayed the remaining portion of the conditional discharge and probation order. These are our reasons for so doing.

[3] On the date of the incident, the health inspector attended a restaurant owned by the accused to conduct a routine inspection pursuant to *The Public Health Act*, CCSM c P210 [the *PHA*]. The health inspector was familiar with the accused, having conducted many inspections of the restaurant before. The health inspector explained the reason he was there and attempted to gain entry to inspect the restaurant. The accused refused the health inspector entry, grabbed his arm and then pushed the health inspector away from the door, causing him to slip. As a result of the incident, the health inspector sustained minor injuries consisting of bruising and muscle soreness.

[4] The only issue in this appeal is whether the health inspector was a peace officer within the definition found in section 2 of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], which states:

Definitions

2 In this Act,

...

peace officer includes

...

(c) a police officer, police constable, bailiff, constable, or other person *employed for the preservation and maintenance of the public peace* or for the service or execution of civil process[.]

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

...

agent de la paix

...

c) tout officier de police, agent de police, huissier ou autre personne *employée à la préservation et au maintien de la paix publique* ou à l'exécution

des actes judiciaires au
civil[.]

[emphasis added]

[5] After considering the applicable provincial legislation, the trial judge found that the health inspector's position at the time was designated as a peace officer in relation to the enforcement of provincial legislation. Broadly interpreting the definition of peace officer, she found that he was employed for the preservation and maintenance of the public peace.

[6] The summary conviction appeal judge disagreed. Purporting to apply the purposive approach to statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 at para 21 (SCC)), he found that it was "impossible" for a public health inspector (PHI) appointed pursuant to the *PHA* to be a peace officer under the *PHA*.

[7] In reaching his conclusion, the summary conviction appeal judge stated:

The question is whether the [PHI] is responsible for enforcement of the orders under the [PHA]. Paragraphs 28(1)(b) and 84 of the [PHA], state a [PHI] may seek the assistance of a peace officer to enforce an order issued under the [PHA]. If a [PHI] can request assistance by a peace officer to enforce the orders of the [PHA], the reasonable inference is the [PHI] is not the person enforcing the [PHA]. If the [PHI] was responsible for enforcement under the [PHA], requesting the assistance of a peace officer would be superfluous.

[8] The issue of statutory interpretation is a question of law to be reviewed on the standard of correctness (see *Housen v Nikolaisen*, 2002 SCC 33 at para 8).

[9] In our view, the summary conviction appeal judge erred. His interpretation of sections 28(1)(b) and 84 of the *PHA* fails to recognize that there are numerous different types of peace officers, each with differing authority. In this case, should a PHI require *assistance* to enforce the *PHA* or for any other reason that is beyond their authority, they are entitled to request the assistance of a peace officer who does have such authority. That does not mean that a PHI is not authorized to enforce the *PHA*.

[10] In *R v Nolan*, 1987 CanLII 66 (SCC), Dickson CJC described the term peace officer in section 2 of the *Code* as follows: “[C]ertain persons who derive their authority from other sources will be treated as ‘peace officers’ as well, enabling them to enforce the [Code] within the scope of their pre-existing authority, and to benefit from certain protections granted only to ‘peace officers’” (at para 19).

[11] In this case, we are concerned with protections granted to peace officers when enforcing legislation within the scope of their pre-existing authority.

[12] In Manitoba, the schedule of definitions in *The Interpretation Act*, CCSM c I80, defines peace officer as including “a person appointed under any Act for the enforcement of that Act”. In this case, the health inspector was appointed pursuant to section 7 of the MB, *Public Health Personnel Regulation*, Man Reg 28/2009. The health inspector had the authority to

inspect the restaurant (see the *PHA*, ss 86(1), 86(3)) and the accused had a duty to comply (see *ibid* at s 86(6)).

[13] Thus, the health inspector was, at the relevant time, a peace officer for the purpose of enforcement of the *PHA*.

[14] Regarding the second part of the definition, as to whether the health inspector was employed for the preservation and maintenance of the public peace, we start by noting that the jurisprudence supports the position of the Crown that that phrase should be interpreted expansively to include “a state of public order and decorum” (*R v Goy* (1969), 67 WWR 375 at 381, see also 380, 1969 CanLII 1124 (MB Mag Ct)).

[15] The law is clear that a person appointed as a peace officer to enforce provincial legislation can fall within the definition of peace officer as found in section 2 of the *Code*. A comprehensive review of analogous classes of peace officers is found in *R v Mulder*, 2002 BCPC 585 at paras 25-33 [*Mulder*]. Such persons include transit officers (see *Mulder*); forest rangers (see *R v Beaman*, 1963 CanLII 73 (SCC)); municipal by-law officers (see *R v Laramee* (1972), 9 CCC (2d) 433, 1972 CanLII 1365 (NWT Mag Ct)); animal control officers (see *R v Jones*, [1975] 5 WWR 97, 1975 CanLII 1562 (YK Mag Ct)); poundkeepers (see *R v Moore* (1983), 21 Man R (2d) 77, 1983 CanLII 3709 (MB Co Ct)); liquor control inspectors (see *R v Forhan* (1927), 48 CCC 86, 1927 CanLII 512 (AB Dist Ct)); and wildlife officers (see *R v Rutt*, 1981 CanLII 2083 (SKCA)).

[16] Section 2 of the *PHA* states its purpose:

Purpose of Act

2 The purpose of this Act is to enable the delivery of public

Objet de la présente loi

2 La présente loi a pour objet de permettre la fourniture de

health services to protect and promote the health and well-being of the people of Manitoba.

services de santé publique visant la protection et la promotion de la santé et du bien-être de la population du Manitoba.

[17] We agree with the reasoning of the trial judge when she stated:

[T]his court is of the view the definition of peace officer should not be narrowly construed. In this court's view, the preservation and maintenance of the public peace includes protecting the public from dangers to public health through the enforcement of the [PHA] and its regulations. [The health inspector] was attempting to enforce the Manitoba [PHA] by conducting a routine inspection of a restaurant which serves food to the public. His actions did not go beyond the scope permitted in the Act. See also the subsections included under Sections 83 and 86 of the Act.

[18] Finally, we would note that the attempted inspection in this case occurred at a time when COVID-19 restrictions were in place, including restrictions placed on restaurants. This only serves to highlight the significance of the PHA in promoting the preservation and maintenance of the public peace.

[19] In the result, we allowed the appeal, restored the conviction for assault peace officer and restored the sentence imposed by the trial judge. At the invitation of the Crown, we ordered a stay of the execution of the remaining portion of the conditional discharge and probation order.

Cameron JA

leMaistre JA

Turner JA
