

Review on the Record Pursuant to s. 141 of the Police Act

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**Response to Submission of the Respondent Officers
Scope Review on the Record**

1. I am commission counsel on this matter and the purpose of this submission is to respond to and address Mr. Woodall's written submissions regarding the scope of the review on the record.
2. The Police Complaint's Commissioner considered the respondent officers' request for a review on the record. On November 18, the Police Complaint's Commissioner issued a Notice of Review on the Record pursuant to s. 137(2) of the *Police Act*.
3. In issuing that Notice of Review on the Record, the Police Complaint's Commissioner made the determination that there was not a reasonable basis to believe that the discipline authority's determinations as to whether misconduct had been proven were incorrect pursuant to s. 125(1) of the *Police Act*.
4. The Police Complaint's Commissioner did, however, determine that a review on the record was necessary given that pursuant to s. 138(2)(d)(ii) of the *Police Act* an arguable case could be made out that the disciplinary or corrective measures proposed were inappropriate or inadequate. The Police Complaints Commissioner concluded that the discipline authority incorrectly applied s. 126 in the manner which they proposed disciplinary or corrective measures under s. 128(1) of the *Act*.
5. It is clear that the Police Complaint Commissioner's jurisdiction to determine whether to arrange for a public hearing or a review on the record is derived from a consideration of s. 138 of the *Police Act*.
6. The *Police Act* is specific as to when the Police Complaint's Commissioner must arrange for a public hearing or review on the record. Section 138(1) clearly states:

the police complaint commissioner must arrange a public hearing or review on the record if the police complaint commissioner

- (c) considers that there is a reasonable basis to believe that
 - (i) the discipline authority's findings under section 125(1)(a) [*conclusion of discipline proceeding*] are incorrect, or
 - (ii) the discipline authority has incorrectly applied section 126 [imposition of disciplinary or corrective measures] in proposing disciplinary or corrective measures under section 128(1) [*disciplinary disposition record*], or
- (d) otherwise considers that a public hearing or review on the record is necessary in the public interest.

7. Once the Police Complaints Commissioner has made a decision with respect to the basis for arranging for a review on the record, it is clear that the parameters or scope of the review will be dictated pursuant to the conclusions arrived at by the Police Complaints Commissioner on the application of s. 138 of the *Act*.

8. Clearly where the Police Complaints Commissioner has made the decision that the discipline authority's findings under s. 125(1) are correct, then any determination as to whether or not any misconduct has been proven is not a live or relevant issue to be addressed in the scope of the review.

9. Also, a clear and commonsense interpretation of the *Act* would dictate that where the Police Complaints Commissioner has determined that there is a reasonable basis to believe that the discipline authority has incorrectly applied s. 126 of the *Act* in proposing disciplinary or corrective measures the review on the record will be confined to the issue of disciplinary or corrective measures and will not include the issue of the discipline authority's findings under s. 125(1)(a).

10. Section 141(10) of the *Police Act* provides as follows:

After a review of a disciplinary decision under this section, the adjudicator must do the following:

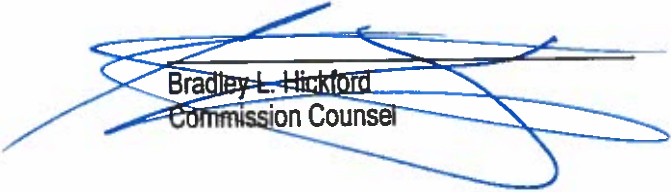
- (a) decide whether any misconduct has been proven;
- (b) determine the appropriate disciplinary or corrective measures to be taken in relation to the member or former member in accordance with section 126

[imposition of disciplinary or corrective measures] or 127 [proposed disciplinary or corrective measures];

- (c) recommend to a chief constable or the board of the municipal police department concerned any changes in policy or practice that the adjudicator considers advisable in respect of the matter.

11. The Respondent submits that pursuant to s. 141(1)(a), the Adjudicator must necessarily determine whether any misconduct has been proven. In my respectful submission, such an interpretation is not reasonable when the *Act* is considered as a whole. Clearly, s. 141(10)(a) in referencing a determination as to whether or not any misconduct has been proven, is placed within the statute for the purposes of addressing a review on the record where the police complaint's commissioner has made the determination that the discipline authority's findings under s. 125(1) are incorrect.
12. Section 138 of the *Police Act* clearly provides the jurisdiction afforded to the adjudicator once the Police Complaints Commissioner has determined whether it will be the discipline authority's findings under s. 125 that will be the subject of consideration or the discipline authority's application of s. 126 that will be for consideration.
13. In conclusion it is my submission that the jurisdiction of the adjudicator in determining what the scope of the review will be is derived directly from the Police Complaint's Commissioner's Notice of Review on the Record wherein the determination as to the scope of the review has been decided under s. 138 of the *Police Act*.
14. In reading s. 138 of the *Police Act* in conjunction with s. 141, it would not make sense to come to the conclusion that if the Police Complaint's Commissioner arranges a review on the record, that the scope of that review would not be limited pursuant to the determinations made and conclusions arrived at by the Police Complaints Commissioner pursuant to s. 138 of the *Police Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.


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