

**IN THE MATTER OF THE OFFICE OF THE POLICE
COMPLAINT COMMISSIONER**

Date: 20171005
Public Hearing Number: 2014-9836
Location: Vancouver

In the Matter of

**Constable David Bunderla
and
Constable Richard O'Rourke**

Before: Adjudicator Oppal

REVIEW ON THE RECORD

Oral Reasons for Judgment

Commission Counsel:	B. Hickford
Counsel for Members Bunderla and O'Rourke:	K. Woodall
Place and Date of Hearing:	Vancouver, B.C.
Place and Date of Judgment:	Vancouver, B.C. October 5, 2017

[1] **THE ADJUDICATOR:** Constables Bunderla and O'Rourke are officers of the South Coast British Columbia Transit Service. On September 21st, 2016, a discipline authority made findings of misconduct against both officers. This is a review on the record pursuant to s. 137(2) and s. 141 of the *Police Act* concerning the appropriateness and/or the adequacies of the disciplinary/corrective measures imposed by the discipline authority.

[2] Counsel for the officers has made an application for an order of recusal of myself as an adjudicator based on the grounds of a reasonable apprehension of bias. Simply put, the application for recusal is based on the following facts:

1. Brock Martland, a Vancouver lawyer, has an agreement pursuant to which he gives legal advice from time to time to the commissioner.
2. Mr. Martland, who is in private practice, also is available to give advice to adjudicators under the Act.

[3] It is therefore alleged that an informed person viewing the circumstances, realistically and practically, would come to the conclusion that there is a reasonable apprehension of bias on the part of the adjudicator.

[4] Counsel for the officers, Mr. Woodall, has filed a notice of motion in which he seeks the following relief:

1. An order directing the Police Complaint Commissioner and the Deputy Police Complaint Commissioner to attend the public hearing in order to answer questions relating to Mr. Martland's retainer.
2. For the Commissioner to bring all records of communications relating to Mr. Martland's retainer.
3. For an order that an affidavit filed by Andrea Spindler, the Director of Operations for the Office of the Police Complaint Commissioner, not be admitted into evidence.

[5] In the alternative to the relief sought above, that the Police Complaint Commissioner, the Deputy Commissioner, and Ms. Spindler be invited to attend the review on the record.

[6] This is a hearing on the record. I have no jurisdiction or authority to compel either the Commissioner, the Deputy Commissioner, or anyone else in his office to

attend to give evidence. As well, I do not think it is necessary to invite anyone from the office to give evidence. The participation of those witnesses is sought in order to explain the nature of Mr. Martland's relationship to the Commissioner's office. The question that I must answer ultimately in this application is whether there is a reasonable apprehension of bias. With respect, I do not think I would be assisted by knowing the precise nature of the relationship that Mr. Martland has with the Commissioner.

[7] In my view, I can answer the question relating to recusal by noting the following. Mr. Martland is a lawyer in private practice. Amongst his clients is the Police Complaint Commissioner. Pursuant to the agreement that he has with the Commissioner, he is made available from time to time to give advice to retired judges who act as adjudicators. The issue is whether that evidence leads to the conclusion that there is a reasonable apprehension of bias. I find that it does not at this stage. I should say that I find that I do not -- it is not necessary for me to hear the circumstances relating to the relationship that Mr. Martland has with the commissioner's office would assist me.

[8] The application contained in the notice of motion is therefore dismissed.

ADJUDICATOR OPPAL