

**In the Matter of the Public Hearing into the
Complaint against Sergeant David Berndt
Of the Central Saanich Police Services
Police Act, R.S.B.C. c 267
OPCC #2009-4966**

Notice of Discipline Authority's Decision

Sergeant David Berndt has admitted, or been found to have committed, three allegations of misconduct under the Police Act, to wit:

- 1) That while off duty in Armstrong, BC, on July 22, 2009, Sergeant Berndt acted in a manner that was likely to discredit the reputation of the municipal department with which he was employed;
- 2) That while off duty in Armstrong, BC, on July 22, 2009. Sergeant Berndt produced his police identification and badge to Armstrong RCMP officers to gain favourable treatment;
- 3) That while off duty on July 22, 2009, Sergeant Berndt was intoxicated in a public place in Armstrong, BC.

Aggravating and Mitigating Factors:

- a) Seriousness of the misconduct – Sergeant Berndt was intoxicated in a public place, and was abrasive and unprofessional to the attending RCMP officers who were attempting to assist his wife discover his whereabouts. The conduct was serious, but off duty and a long way from his place of employment.
- b) Record of employment – The Sergeant's record contains no record of discipline but does contain a number of concerns about his conduct if under the influence of alcohol. Otherwise, Sergeant Berndt has received, from persons who reside in his

community, a number of commendations and letters of appreciation for his policing efforts.

- c) Impact of disciplinary/corrective measures taken by the municipal force – Sergeant Berndt was charged with three delicts (one much more serious than the one proceeded with here), found to have committed them by a Discipline Authority, and has lived under the discipline imposed by that Authority for a period of one year. The effect of that discipline is dealt with later in these reasons.
- d) Likelihood of future misconduct – Sergeant Berndt, an admitted alcoholic, has taken significant steps to alleviate concerns of a reoccurrence of this conduct. There remains a concern that under emotional stress, he must rely on his lifeline of support.
- e) Whether the member accepts responsibility for the misconduct – Sergeant Berndt, as indicated above, has taken full responsibility for managing his medical condition and appears determined to avoid any repetition of the behaviour which has brought him before this tribunal.
- f) Whether the municipal police department's policies contributed – does not appear to be applicable here.
- g) Range of disciplinary/corrective measures taken in similar circumstances – A number of previous decisions has been referred to by Counsel. The guidance they provide is limited, in my view. Perhaps as this area continues to be monitored by the OPCC, the decisions will become more consistent.
- h) Other aggravating or mitigating factors – Some are dealt with later in these reasons.

Section 126(3) of the Police Act:

If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

Events Since the Original Discipline:

In the face of an appeal of the original disciplinary authority hearing, Sergeant Berndt was reduced in rank to a corporal and had his pay reduced from \$102, 481.00 to \$90, 656.00. He also voluntarily attended for a professional assessment of his medical condition (alcohol addiction). He was allowed to return to work on April 7, 2011, no doubt under the watchful eyes of his supervisors and fellow officers. Since then, he has been assigned to general duties and has been an acting sergeant during evening shift. No suggestion has been made that he has at any time consumed alcohol since the events in Armstrong, BC, on the 22nd of July, 2009.

Delict #1:

I agree with the suggestion of Counsel for the OPCC that with regard to this delict, a written reprimand is adequate. Sergeant Berndt has apologized in writing to the RCMP members involved and appears genuinely remorseful for the conduct he displayed on the evening of these events.

Delict #2 and #3:

The original discipline imposed by the Discipline Authority of a reduction in rank from the effective date of this decision (November 4, 2010) may have been a reasonable discipline because of the seriousness of the original delict found. Care and control of a motor vehicle while impaired is an offence under the Criminal Code of Canada, whereas the offense dealt with by me – to wit, state of intoxication in a public place – is a summary provincial offence and of a much less serious nature.

Reduction in rank is an extremely severe discipline, and is unsupported by any of the precedent cases referred to me by Counsel. I appreciate that Central Saanich is a relatively small police force, but the issue to be dealt with in this matter is basically one of alcoholism. The reduction in rank does little to solve that problem. I intend to find,

and do find, that Sergeant Berndt should be retroactively returned to the rank of sergeant, effective November 4, 2010.

I support, however, the original imposition of supervision and assessment, as it was necessary at the time and provided management with the tools to deal successfully with the potential problem of Sergeant Berndt's alcoholism.

In the report of consulting psychiatrist Dr. Laura Chapman, dated April 4, 2011, she indicated that Sergeant Berndt was fit to return to work, subject to reorientation because he had been off work for 3 ½ years. She also recommended mentoring and supervision.

Other Relevant Factors:

In reaching my decisions regarding the appropriate discipline for delicts #2 and #3, I have taken into consideration several factors. First is the booklet of cases given to me by Counsel. All of the cases dealt with similar examples of misconduct by a police officer.

The second factor influencing my decision is the precedent set by retired Justice Ian Pitfield, OPCC # 2009-4716, dated 11 August 2010. This matter dealt with an off-duty officer who was stopped at a sobriety roadblock and investigated for alcohol consumption. When his initial response was to display his badge, the investigating officer took exception and required the off-duty officer to submit to a roadside screening test. The instrument registered a "warn" (a level between 50 and 99 mgs of alcohol per 100 mls of blood). A 24 hour roadside driving prohibition was issued.

After a pre-hearing conference, the officer accepted responsibility and agreed to a written reprimand for the 24 hour suspension, and for advice to future conduct for the use of his badge to gain favourable treatment. The OPCC reviewed the proposed discipline and agreed with the resolution of that matter. Although it is impossible to know all of the aggravating and mitigating factors, the Pitfield decision appears to be on all fours with the matter before this tribunal.

The third factor to be noted is that at the time of these delicts, Sergeant Berndt had been on LTD for almost two years, recovering from serious heart surgery. This does not excuse his behaviour on the day in question, but it does provide a background quite different from that of an active police officer.

Conclusion:

It is my view that since the date of the original disciplinary hearing on November 4, 2010 (almost one full year ago), the intent of the Act as expressed in Section 126(3) has been accomplished.

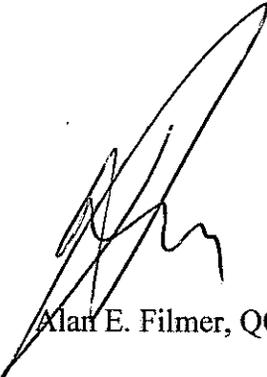
Overall, I feel that Sergeant Berndt has paid a considerable penalty for his conduct on the evening of July 22, 2009, in Armstrong, BC, and that the following is adequate discipline for his three delicts:

Delict #1 - a written reprimand;

Delict #2 – advice to future conduct; and

Delict #3 – a written reprimand.

This discipline, together with the return to rank as indicated herein, is consistent with the intent of the Police Act.



Alan E. Filmer, QC, Adjudicator

Nov. 3, 2011
Date