

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

**IN THE MATTER OF THE PUBLIC HEARING
INTO THE COMPLAINT AGAINST
CONSTABLE #369 ADAM PAGE
OF THE ABBOTSFORD POLICE DEPARTMENT**

DECISION ARISING FROM PUBLIC HEARING

PART II

TO: Constable Adam Page, Abbotsford Police Department

AND TO: Chief Constable Bob Rich, Abbotsford Police Department, Discipline Authority

AND TO: Mr. Stan Lowe, Police Complaint Commissioner

AND TO: Mr. Joe Doyle, Counsel for Police Complaint Commissioner

AND TO: Mr. Kevin Woodall, Counsel for Constable Page

Introduction

[1] I provided reasons on February 25, 2013 setting forth my finding that Const. Page committed the disciplinary default of abuse of authority when he assaulted Mr. Darrell Kerr on September 20, 2009, and the disciplinary defaults of deceit when he made false or misleading statements on December 21, 2010, and again on March 1, 2011, in relation to the assault. Counsel appeared on April 4, 2013 to make submissions with the respect to sanction or penalty.

[2] Public hearing counsel submitted that the circumstances surrounding the defaults and their character should compel consideration of dismissal from police service or a lengthy suspension without pay. Counsel for Const. Page submitted that dismissal was not an option that should be considered in the circumstances, but that a suspension of

three scheduled working days without pay in respect of the default of assault, and fifteen days in respect of the defaults of deceit would be appropriate.

The Regulatory and Statutory Parameters

[3] The default of abuse of authority by way of assault occurred on September 20, 2009. As a result, the imposition of a penalty is governed by the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98, in force at the time. The defaults of deceit occurred after March 31, 2010, by which time amendments to the *Police Act*, RSBC 1996, c. 267, had been proclaimed so that discipline was governed by the *Act* and not by the *Regulation*.

[4] In relation to sanction, s. 19 of the *Regulation* provided as follows:

19 (1) After finding that a disciplinary default has occurred, the discipline authority may impose one or more of the following disciplinary or corrective measures in relation to the police officer concerned:

- (a) dismissal;
- (b) reduction in rank;
- (c) transfer or reassignment;
- (d) suspension without pay for not more than 5 scheduled working days;
- (e) direction to work under close supervision;
- (f) direction to undertake special training or retraining;
- (g) direction to undertake professional counseling;
- (h) written reprimand;
- (i) verbal reprimand.

(2) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, the discipline authority must choose the least onerous

disciplinary or corrective measures in relation to the police officer concerned unless one or both of the following would be undermined:

- (a) organizational effectiveness of the municipal police department with which the police officer is employed;
- (b) public confidence in the administration of police discipline.

[5] Section 19(4) required consideration of aggravating and mitigating circumstances. That requirement did not differ in any material respect from the comparable provision continued in s. 126 of the *Police Act*. Section 126 provided as follows:

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [*complainant's right to make submissions*], the discipline authority must, subject to this section and sections 141 (10) [*review on the record*] and 143 (9) [*public hearing*], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,

- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
 - (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
 - (d) the likelihood of future misconduct by the member,
 - (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
 - (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
 - (g) the range of disciplinary or corrective measures taken in similar circumstances, and
 - (h) other aggravating or mitigating factors.
- (3) 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.

[6] The principal difference between s. 19 of the *Regulation* and s. 126 of the *Act* is omission from the *Act* of a provision comparable to s. 19(3). In my opinion, s. 126(3) is broad enough to require consideration of the effect of any sanction on organizational effectiveness and consideration of its effect on public confidence in the administration of police discipline. While the requirement that the discipline authority choose the least onerous disciplinary or corrective measure unless organizational effectiveness or public confidence in the administration of police discipline would be undermined has been removed, the overriding principle under the *Act* remains the imposition of a sanction that corrects and educates the member unless it is unworkable or would bring the administration of police discipline into disrepute.

Should Dismissal be Considered an Option?

(a) Assault

[7] Dismissal is the most severe of the permitted sanctions. It neither corrects nor educates the member. It punishes by terminating the member's employment. Therefore, in the context of the abuse of authority by way of assault of a civilian, I must decide whether the imposition of a lesser sanction directed at correcting or educating the officer would undermine organizational effectiveness, or public confidence in the administration of police discipline. If not, then a lesser sanction should be considered provided the sanction that is selected does not undermine public confidence in the administration of police discipline.

[8] No mandatory minimum sanction is attached to any disciplinary default. Similarly, there is nothing that deems any particular assault to undermine organizational effectiveness or public confidence in the administration of police discipline. Rather, as so well stated by Adjudicator Clancy *In the Matter of Constables Gemmell and Kojima*, PH 2004-01, the question to be considered is whether a reasonable man or woman aware of all the relevant circumstances would regard the omission to impose a sanction of dismissal in the circumstances of this assault would undermine public confidence in the administration of police discipline, and whether, from the Abbotsford Police Department's perspective the omission would undermine organizational effectiveness.

[9] The assault that was committed by the application of excessive force when taking physical control of a civilian who was handcuffed and under arrest, was not of the most severe kind. Mr. Kerr did not require medical attention. He did not complain about the officer's conduct. The circumstances that resulted in the report of the incident to police discipline authorities some seven months after its occurrence were not described in the course of the hearing. While Const. Page denied that he had improperly applied excessive force to Kerr, he did plead guilty to assault when he was charged. The court's assessment of the nature and severity of the assault were reflected in the sentence imposed; namely a conditional discharge subject to one year of probation. The record

indicates that Const. Page had no prior disciplinary defaults in the course of his then five-year police career.

[10] I find that a reasonable member of the public would conclude that the failure to consider dismissal in the context of this default of abuse of authority by way of assault would not undermine public confidence in the administration of police discipline. Likewise, I cannot conclude that the nature and character of this assault are such that ongoing employment with the Abbotsford Police Department would undermine organizational effectiveness. This is an example of a one-off incident associated with the arrest and detention of a suspect that cannot be condoned, but that, of itself, should not result in the termination of the officer's career. Lesser sanctions can lead to the correction of the officer's conduct and his useful and continuing role as a member of the police department. The threshold for the consideration of dismissal in relation to the disciplinary default of deceit has not been reached.

(b) Deceit

[11] In my opinion, deceit is the most serious disciplinary default that can be committed by a police officer. The fact an officer knowingly makes a false or misleading statement in a duty report or in the course of reporting to, or being interviewed by, a senior officer must adversely affect one's assessment of the officer's integrity and honesty, and one's assessment of his or her suitability to be or remain a member of a police department. Integrity is a core value the public has a right to expect and demand of police officers in order that the public will have confidence in the fair, lawful, and trustworthy administration of justice. Lying or the making of misleading statements in relation to an officer's dealings with a member of the public cannot be condoned. In my opinion, the public has a right to expect that dismissal will always be a sanction for consideration where deceit is at the core of a disciplinary default.

[12] In addition, it must be apparent that deceit compromises internal organizational effectiveness. A police organization must be able to expect and receive honest accounts of incidents and the involvement of officers in them from its members. Nothing can

compromise police effectiveness more readily than loss of confidence in an officer's preparedness to tell the truth to superiors whatever the consequences may be.

[13] In sum, I conclude that dismissal is an option that must be considered in relation to the disciplinary defaults of deceit in this case as urged by public hearing counsel.

The Appropriate Sanctions

[14] I have noted that while in no way excusable, the assault of Mr. Kerr in this case was moderate in nature. It resulted from the unnecessary, unjustified and excessive use of force to control Mr. Kerr in order that he could be moved to a police vehicle and then transported to a detention centre. The assault resulted from the officer's sudden and unexplained loss of temper.

[15] Having regard for the nature and circumstances of the default, I am satisfied that Const. Page should be suspended for three scheduled working days without pay, that being somewhat less than the maximum stipulated by the *Code of Professional Conduct Regulation* that applies to this default.

[16] I was advised that the officer has been engaged in a program of anger management. I direct that he complete that program to the satisfaction of supervising officers.

[17] The sanctions I have imposed appropriately reflect the seriousness of the default, Const. Page's record of employment, his eventual admission of the default, and the steps on which he has embarked in an effort to avoid a recurrence of this kind of incident.

[18] The determination of the appropriate sanction in relation to the two disciplinary defaults of deceit is difficult. In the context of the aggravating and mitigating circumstances enumerated in s. 126 of the *Act*, I would reiterate that deceit of any kind is serious and the seriousness is compounded by the repetition of false or misleading statements on successive occasions. One cannot ignore the fact that dismissal would obviously have an adverse effect upon Const. Page although he is likely well qualified for his prior occupation as a corrections officer. While the seriousness of the misconduct has

been brought home to Const. Page and one would hope that there would be no recurrence of a similar default, there is no assurance that in difficult personal circumstances he would not resort to misleading information in an attempt to avoid consequences associated with other shortcomings in his conduct.

[19] There are certain mitigating circumstances that should be taken into account in deciding whether dismissal is appropriate. I must note that the Chief Constable as the original discipline authority determined that the disciplinary defaults of deceit had not been substantiated contrary to the recommendations of the investigating officer. The Chief removed Const. Page from active patrol duties and assigned him first to the telephone response unit, and later to a role as one of four patrol administrative constables in the force responsible for providing administrative support and assistance to active patrols.

[20] The evidence at the penalty portion of this proceeding indicates that Const. Page has made an effort to perform at an acceptable level in the roles assigned to him. His supervising officer reports that the quality of Const. Page's work has been above average. In a letter provided at the request of public hearing counsel, the Chief does not state that he expects Const. Page will return to active patrol service, but he notes that "he continues to provide the same level of diligent work" as a PAC that he did when with the telephone response unit. The Chief does not say that it will be difficult or impossible to accommodate Const. Page as a member of the department other than on active patrol. I construe the Chief's support for Const. Page to be neither positive nor negative, but neutral.

[21] Const. Page provided a number of letters from fellow officers and supervisors attesting to his satisfactory performance. Sergeant Marshall, his supervising officer, described Const. Page as a "valuable member of our department [who] has continually contributed towards the department's goals." Sergeant Olson reported favourably on Const. Page's work as a PAC and in the telephone response unit. Staff Sergeant Kingra wrote to like effect.

[22] Counsel for Const. Page urges me to refrain from dismissing Const. Page. He says that the circumstances that resulted in dismissal in the Gemmell and Kojima matter with which Adjudicator Clancy was concerned were markedly more egregious than those that prevail in this case. Gemmell and Kojima were dismissed as a consequence of having participated in a series of severe assaults of a civilian who was taken to Stanley Park by the officers and there beaten. In addition to denying any wrongdoing, Gemmell and Kojima were found to have been deceitful throughout the discipline process. The deceit was directed at covering up a series of severe assaults in which the officers engaged. The circumstances are not comparable to those with which I am concerned where all of the circumstances were captured in an audio-visual recording.

[23] Counsel for Const. Page referred to a second instance that resulted in dismissal at the conclusion of a disciplinary proceeding that did not proceed to a public hearing. The decision is therefore not in the public domain. The officer in question was dismissed after fabricating an explanation regarding damage to a police vehicle which he was operating after consuming alcohol and while off duty. In addition to fabricating the circumstances, the officer failed to remain at the scene of an accident, failed to report an accident involving damage to property, and falsified a report on the time and date of the accident. Overall, the officer fabricated a description of events from beginning to end in an effort to exculpate himself.

[24] In this instance, Const. Page's actions were observed by two other individuals; namely a fellow officer and a drugstore loss prevention officer. His actions were video and voice-recorded. It is difficult to comprehend how he thought his statements whether written or oral would successfully contradict the recording.

[25] Counsel for Const. Page also cites a decision of mine at the disciplinary level that cannot be reported in which I imposed a five-day suspension on an officer who had made false or misleading statements about the circumstances surrounding entry to a private dwelling. In that case, public hearing counsel did not ask that I consider dismissal. The case was decided under the *Code of Professional Conduct Regulation* when the maximum period of suspension was five days as opposed to the thirty days now permitted

under the *Act*. I imposed the maximum suspension and made the sanction consecutive to three concurrent, two-day suspensions that had been imposed by the discipline authority in relation to the unlawful entry to a private residence. In effect, given the limited differences in the positions advanced by opposing counsel, the recommendations appeared to be much like a joint submission, something that is lacking in this case. I am not prepared to equate the circumstances in the two cases. Const. Page made his first statement fully aware of the content of the audio-video recording clearly displaying and contradicting his description of events. In the other matter to which counsel referred, the officer's statements derived from a recollection of the events surrounding entry to a dwelling in order to effect an arrest on an outstanding warrant.

[26] In sum, I conclude that dismissal is not warranted and find that a fully informed reasonable member of the public would concur. At the same time, I find that a reasonable member of the public would conclude that anything less than a lengthy suspension would bring the administration of police discipline into disrepute by failing to recognize the deleterious effect of deceit on the reasonable expectation that officers will act with integrity and honesty in their dealings with the public and their law enforcement agency.

[27] I conclude that the appropriate sanction in relation to each of the disciplinary defaults of deceit is suspension for twenty-five scheduled working days without pay. The suspensions will be concurrent, but consecutive to the three-day suspension for the disciplinary default of abuse of authority such that the total period of suspension will be twenty-eight days.

DATED at Vancouver, British Columbia, the 17th day of April, 2013.

“Ian H. Pitfield”

Ian H. Pitfield
Adjudicator