

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 #134 KEN JANSEN
OF THE SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY**

**DECISION ARISING FROM PUBLIC HEARING
DISCIPLINARY AND CORRECTIVE MEASURES**

TO: Constable Ken Jansen

AND TO: Acting Deputy Chief Officer J.B. MacDonald, Discipline Authority

AND TO: Mr. Stan Lowe, Police Complaint Commissioner

AND TO: Mr. Joe Doyle, Public Hearing Counsel

AND TO: Mr. David Butcher, Counsel for Constable Jansen

The misconduct:

On the 6th of December 2013 I rendered a decision arising from a public hearing in which I found Constable Ken Jansen had committed the disciplinary default of deceit. Particulars of the counts of deceit were that:

- a) he made an entry in his notebook that to his knowledge was false or misleading and omitted to record in his notebook the use of force against Mr. Booker, to which he was a witness.
- b) he made an entry in his PRIME synopsis page on May 1, 2010, that to his knowledge was false or misleading.

c) he made a PRIME police statement on May 6, 2010, that to his knowledge was false or misleading.

d) he provided a duty report to Staff Sergeant Doug Fisher, that to his knowledge was false or misleading.

e) he provided an oral statement to Staff Sergeants Doug Fisher and Kent Harrison on December 7, 2010, that to his knowledge was false or misleading.

The legislation:

Section 126 of the *Police Act* provides:

(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.

Seriousness of the breach:

In his April 17th, 2013 decision on Part 2 of the Public Hearing into a complaint against Constable Adam Page, Adjudicator Pitfield discussed at length the seriousness of any deceit committed by a police officer. He said:

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.

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.

In sum, I conclude that dismissal is an option that must be considered...

I agree with Adjudicator Pitfield and adopt his comments as my own.

Though any deceit is a serious disciplinary default, some of these acts are more culpable than others. The intention behind the deceit often colours our view of it. *In the Matter of Gemmill and Kojima*, Adjudicator Clancey noted that there was a series of events: defenceless members of the public were assaulted without provocation, the officers had failed to follow their department's breach of the peace policy and they had worked together to cover up what had happened. Taking these factors into account, the adjudicator found that this was one of the most serious examples of misconduct that could be committed by police officers. (PH 2004-01) By contrast, an Abbotsford officer who lied about the reason he had accessed CPIC records was afforded some sympathy because it was conceded that he had done the unauthorized search because he feared that of a man who had recently been hired by a female friend might pose a risk to her young children. (OPPC File No. 2010-5294).

I found that Jansen had misrepresented facts by exaggerating the peril that his fellow officer was facing and by omitting any mention of the injuries the citizen had sustained as well as any explanation of how they were inflicted. It was evident that he hoped this would assist Spears in defending his decision to use the Taser. Jansen had been trained to provide support to his fellow officers and he let that consideration take precedence over his duty to exercise his independent judgment in providing a fair and accurate report.

This was not a case where the deceit was committed with an intention to cover up the officer's own egregious conduct.

This dynamic had changed by the time Jansen had his interview with Staff Sergeants Fisher and Harrison. By this point he had seen the video and knew that Spears had given a fuller and more accurate account of the events of April 10, 2010. It was his own deceit and an allegation that he had used excessive force by repeatedly knee striking Booker that was under investigation. I found that there had been multiple strikes and that Jansen had failed to answer the investigator's questions in an honest manner. Here his intention was more clearly self-serving. In summary, I find that when compared with the misconduct described in the reported cases the seriousness of Jansen's deceit is in the midrange.

b)Record of employment:

Jansen was a junior officer with less than two year's experience. His file does not contain any performance appraisals. It does contain one letter of commendation. He has not been the subject of any past complaints.

c)The impact of proposed disciplinary measures on the member:

Jansen has already experienced significant financial losses as a result of this investigation. If dismissed he says he is unlikely to be able to obtain work that will give him the income he had as a police officer. He married in 2012 and he and his wife purchased a condominium; they will be unable to meet the mortgage payments on this home if he is dismissed. While acknowledging these hardships, I note that Jansen's relative youth and his childless status leave open the possibility of him pursuing educational opportunities that might well enable him to again be in a position of earning the kind of salary he had anticipated from his policing career.

Jansen has been publicly humiliated as a result of these proceedings and has suffered severe stress and anxiety. This has negatively impacted his physical health. His counsel has suggested that rather than dismissal the corrective measure of a reduction in rank and a suspension should be considered. It seems likely that Jansen is going to find himself in a very difficult situation which involves significant stress regardless of which of the proportionate disciplinary or corrective measures is imposed at the conclusion of this hearing.

d) Likelihood of future misconduct:

This is not a case that arises because the officer lacked self-control or lied under pressure. It was a serious case of poor judgment. Jansen's misdirected effort to demonstrate solidarity with another officer resulted in his suspension and then dismissal. I am satisfied that if given a second chance this is not a mistake he would make again.

e) Whether the member accepts responsibility:

Jansen acknowledges that his reports were wrong. His counsel says he has accepted the findings at this hearing.

f) The degree to which the municipal police department's policies contributed to the misconduct:

Notwithstanding the fact that Jansen received no formal guidance or performance evaluations from the SCBCTA Police Force, I do not find this contributed to his misconduct.

g) The range of disciplinary or corrective measures taken in similar circumstances:

Counsel provided five cases from this jurisdiction in which disciplinary and corrective measures were imposed after a finding of deceit. Two of those cases resulted in dismissal. The remaining three were dealt with by way of suspension and/or demotion.

h) Aggravating and mitigating factors:

i) Under most circumstances the number of substantiated accounts would suggest a continuing course of conduct which would be an aggravating factor. In this case, however, I agree with counsel for the member that the first four allegations which all relate to the initial reporting of the incident should be viewed collectively.

ii) Jansen's young age and limited experience as an officer are mitigating factors.

Section 126(3) provides that:

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.

Jansen was the youngest officer who had ever been accepted into the SCBCTA Police Force. He probably gained this distinction because at a very early age he had decided he wanted to be a police officer. His activities throughout his high school years and immediately thereafter were driven by this passion. In grade eleven he was one of 15-20 students accepted into the Junior Police Academy, a program developed by the Abbotsford Police Department to introduce young people to the work of a police officer. He later volunteered as a reserve with the Abbotsford Police Department. His acceptance as an officer with the SCBCTA marked the fulfillment of a long held dream. He is a young man and could readily pursue training for a different type of career but he has fought dismissal and is highly motivated to continue working as a police officer. I have already found that if he is allowed to continue on the force he is very unlikely to be involved in this type of misconduct again. I also find that given his high level of motivation he would respond well to an approach that seeks to correct and educate.

Would such measures be unworkable?

Chief Officer Neil Dubord was asked to provide an opinion on this issue and it is his view that he would be unable to assign Jansen to any duties that might require that he give evidence in court. He says he would have to assign him to positions that do not exist or to jobs normally performed by civilians at a much lower rate of pay. He considers the SCBCTA Police Force to be too small an organization to accommodate an officer whose usefulness will be limited in this way. I find I can give his opinion little weight for the following reasons:

1. Although he says he is well aware of the circumstances he does not indicate the source of his information. The allegations substantiated by the evidence at this Public Hearing were significantly less egregious than those originally cited.

2. He has never met Jansen and as previously noted, there was nothing in Jansen's personnel file that would assist him in making a determination of this officer's competence or openness to instruction.
3. Notwithstanding the disclosure requirements imposed by the McNeil decision, I have been provided with cases where other officers who have been disciplined for deceit have served as witnesses in court proceedings and had their evidence accepted.
4. Finally the SCBCTA Police Force is not a particularly small detachment; smaller forces have been able to accommodate officers who have returned to work after a finding of misconduct by deceit.

In *The Matter of Constables Gemmell and Kojima*, Adjudicator Clancey said at page 11:

If the officers are reinstated, the imposition of sanctions that seek to correct and educate might well have an adverse impact on the operations of the VPD. Special duties may be necessary for a period of time. There may be concerns over the ability of the Respondents to persuade the Courts to accept their testimony in contested cases. Those concerns could not be said to make a correctional and educational approach unworkable but a normal working relationship may take some time to achieve.

I am mindful of the fact that this decision predates that of the Supreme Court of Canada in *McNeil* but given the jurisprudence that has developed since then as it relates to evidentiary capacity of an officer after a finding of deceit, I find that it is still germane to these consideration and that if Jansen were to be dealt with by way of measures that seek to correct and educate it would not be unworkable.

Would an approach that seeks to correct and educate the member bring the administration of police discipline into disrepute?

The most disturbing aspect of the first four allegations of deceit substantiated against Jansen is the fact that they may well be interpreted by the public as demonstrating a police culture in which members will band together and present false evidence to conceal misconduct by a fellow officer. I found that when he presented his misleading PRIME report Jansen had exaggerated the severity of Booker's attack on Spears and omitted reference to Spear's retaliation. It was my view that he did this because he thought it

would assist Spears in defending his decision to deploy the Taser. Jansen was a keen young officer anxious to succeed in his chosen career. Where did he get the idea that it would be acceptable to be less than fully honest if that would protect a fellow officer who might be guilty of some misconduct?

In the *Gemmell and Kojima* case, it was conceded that the six officers involved had colluded in their efforts to assure that their misconduct would not come to the attention of their superiors or the general public. The police conduct in the case of Robert Dziekanski gave rise to charges of perjury against the officers involved. Again, the allegation is that the officers cooperated in presenting false evidence. Some of those cases are still before the courts. These cases and others like them have done much to destroy public confidence in the integrity of the police.

If a disciplinary penalty short of dismissal were imposed on Jansen, would a member of the public, fully informed of the circumstances, take this as further evidence of a culture of dishonesty within the police force? The facts of this case would dispel any such notion.

First of all, the officer who he was trying to protect filed a report wherein he acknowledged hitting Booker a number of times. He reported that he had done this because the patient had struck him first but he did not exaggerate the severity of the attack by this elderly man.

Secondly, the response of the SCBCTA Police Force was immediate and harsh. Jansen was escorted out of the Transit building and told he could not return. An officer then attended at his home to take away his police gear. Full particulars of the alleged misconduct were provided to an outside agency so that an investigation could be undertaken to determine whether criminal charges should be laid. Once charges were laid and he finally had disclosure of the case against him, Jansen was subjected to an interview with Staff Sergeants Fisher and Harrison. Anyone reading a transcript of that interview would likely conclude that the SCBCTA Police Force had a zero tolerance policy related to this type of behaviour.

In summary, I find that a reasonable person who was aware of the facts of this case would conclude from the behaviour Constable Spears and the response of the SCBCTA Police Service that Jansen's decision to support a fellow officer even if that meant filing less than a full and fair report did not reflect the culture within that police force. For these reasons I find that an approach that seeks to correct and educate the member would not bring the administration of police discipline into disrepute.

Disposition:

There will be a suspension for 14 working days and a demotion to the rank of third class constable with any future promotions to be determined in accordance with the usual policies and practises of the SCBCTA Police Authority. This disposition will apply to each of the five counts of deceit with the period of suspension running concurrently.

In determining the length of the suspension I have taken into account the fact that the member has been dismissed without pay since June 2013. A further suspension whether it is for 14 days or 30 days will not make a significant difference to the hardship occasioned by the wage loss of the past eight months. The further suspension is intended primarily to allow the police force to make any special plans that may be required to give effect to this decision. The demotion is intended to provide a further punishment and consequence, but hopefully it will also help offset any additional costs that may be incurred in providing Jansen with supervision and guidance.

DATED at Surrey, British Columbia, the 13th day of February 2014.

“Carole D. Lazar”

Carole D. Lazar
Adjudicator