

REVIEW ON THE RECORD
(Pursuant to Section 141(2) of the Police Act, R.S.B.C. 1996, c.267)

In the matter of the
Review on the Record into the complaint against
Constable Jana Hardy and Constable Jason Ince
of the Victoria Police Department

**WRITTEN SUBMISSIONS OF CONSTABLE JANA HARDY IN REPLY
TO THE ARGUMENT OF THE POLICE COMPLAINT COMMISSIONER**

1. In the following Reply to the Argument of the Police Complaint Commissioner, unless stated otherwise, the paragraph references are paragraphs in the Commissioner's Argument.
2. In response to paragraphs 5 through 7, counsel for Constable Ince apparently only sought to play video evidence that had been provided to the Discipline Authority below and that is part of the evidence before the adjudicator.
3. It is correct that "no party has sought to expand the evidence beyond the Record or the Disciplinary Decision". Accordingly, the question of the circumstances "that would make such an expansion necessary and appropriate" or, an "evidentiary phase", does not arise. The replaying of video evidence already part of the Record is akin to the repetition of statements forming part of the Record and is not leading evidence but can properly be viewed as part of submissions.
4. In light of the written submissions previously delivered, and the scope of the Commissioner's Reply, Cst. Hardy does not seek to make oral submissions.
5. In response to paragraph 16, it is respectfully submitted that a statutorily imposed review standard of correctness pursuant to s. 149 (9) of the *Police Act*, does not "allow" anything but, in the language of the Supreme Court of Canada's decision in *Dunsmuir*, directs the reviewing body to "undertake its own analysis of the question..." without deference. *Jordan v. Jordan*, cited in paragraph 16 is an appeal from a chambers decision in a B.C. Supreme Court family law case and the Court of Appeal's decision does not comment on, or have any applicability to, the correctness standard of review as it has evolved in administrative law.
6. The position taken on Retrospectivity in the Argument of the Police Complaint Commissioner is contrary to the other decided "transitional" decisions on the point.

7. On the issue of Retrospectivity, Cst. Hardy adopts, repeats, and relies on paragraphs 8 through 12 of Cst. Ince's Reply to the Argument of the Police Complaint Commissioner dated December 20, 2011 and delivered to the adjudicator in this Review proceeding.

All of which is respectfully submitted.

Harold J. Rusk
Counsel for Cst. Jana Hardy

Dated January 5, 2012