



Office of the
Police Complaint Commissioner

British Columbia, Canada

ROR 2012-01

NOTICE OF REVIEW ON THE RECORD
(Pursuant to Section 138(1)(d) *Police Act*, R.S.B.C. 1996, c.267)

In the matter of
Review on the Record into the complaint against
Constable #1438 Jay Johns
of the Vancouver Police Department

TO: Constable #1438 Jay Johns (Member)
Vancouver Police Department

AND TO: Chief Constable Jim Chu (Discipline Authority)
Vancouver Police Department

WHEREAS:

1. On July 29, 2009, Inspector Mario Giardini of the Vancouver Police Department's Professional Standards Section notified the Office of the Police Complaint Commissioner that Constable Jay Johns had been involved in a domestic dispute with his wife, resulting in his arrest by the Langley RCMP on July 29, 2009. At that time, Inspector Giardini was awaiting further information prior to requesting an order to investigate pursuant to the *Police Act*.
 2. On August 19, 2009, the Office of the Police Complaint Commissioner received further information from Sergeant Ron Bieg of the Vancouver Police Department's Professional Standards Section advising that:
 - Constable Jay Johns was arrested on July 29, 2009, and charged with Assault contrary to s. 266 of the *Criminal Code* arising from a domestic dispute with his wife that occurred on July 28, 2009. This occurred while Constable Johns was off-duty.
 - Constable Johns was released on an Undertaking that contained a "no contact" condition.
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- Constable Johns had reportedly breached the “no contact” condition on three occasions that has resulted in additional charges of breach of undertaking, contrary to s. 145 of the *Criminal Code*.

Sergeant Bieg requested an order pursuant to s. 55(3) of the *Police Act* to initiate an investigation into the allegations of Improper Off-Duty Conduct.

3. On August 20, 2009, my office confirmed the characterization of the complaint as Public Trust, and ordered that the alleged misconduct be investigated pursuant to s. 55(3) of the *Police Act*. I also ordered that the investigation include any other potential disciplinary defaults, or attempted disciplinary defaults, pursuant to s. 4(1) and s. 4(2) of the *Code of Professional Conduct Regulation* that may have occurred in relation to the incident.
4. On February 15, 2010, after no substantive steps had been taken to investigate the incident by the Vancouver Police Department (VPD) and in the public interest, I issued an Order for External Investigation. Pursuant to s. 55.1(b) of the *Police Act*, I appointed the provincial police force, to wit: the Royal Canadian Mounted Police (RCMP), E Division, to conduct this investigation and to prepare and forward an investigation report to the Discipline Authority in accordance with the *Police Act*. I was advised that the external investigation would be conducted by Staff Sergeant Mike Coyle of the Langley RCMP.
5. On March 31, 2010, a newly amended *Police Act* was enacted. The *Code of Professional Conduct Regulation* was repealed.
6. On October 5, 2010, Staff Sergeant Mike Coyle of the RCMP submitted his Final Investigation Report to the Discipline Authority, Inspector Mike Cumberworth of the Professional Standards Section of the VPD. Staff Sergeant Coyle recommended that the misconducts of Neglect of Duty and Deceit be substantiated and outlined seven particulars supporting this recommendation.
7. On October 20, 2010, Inspector Cumberworth, the Discipline Authority, issued his Notice of Discipline Authority's Decision in which he determined that the evidence contained within the Final Investigation Report, appeared to substantiate allegations of Discreditable Conduct pursuant to s. 77(3)(h) of the *Police Act*, and Deceit pursuant to s. 77(3)(f) of the *Police Act*.
8. On November 18, 2010, my office granted an extension of the Discipline Proceeding until December 13, 2010.
9. In a letter dated December 8, 2010, Chief Constable Jim Chu of the VPD advised my office, that pursuant to s. 134 of the *Police Act* he was delegating Superintendent Robert Rothwell of the VPD, as Discipline Authority for the purposes of the Discipline Proceedings against Constable Jay Johns.
10. On December 13, 2010, the Discipline Authority convened a discipline proceeding which was recorded pursuant to the *Police Act*. At the request of Mr. Kevin Woodall, counsel for Constable Johns, the proceeding was adjourned until January 12, 2011.

11. On January 12, 2011, the Discipline Proceeding was re-convened, at which time Mr. Kevin Woodall made an application to adjourn the hearing in order to prepare and exchange submissions with Discipline Authority counsel, Mr. Steven Boorne. The proceeding was adjourned and after several later adjournments by letter of agreement, the date to resume was scheduled for April 21, 2011.
12. On April 21, 2011, the Discipline Authority re-convened the discipline proceeding which was recorded pursuant to the *Police Act*. Staff Sergeant Mike Coyle provided testimony detailing the *Police Act* investigation which he conducted. Mr. Kevin Woodall acting on behalf of Constable Jay Johns cross-examined Staff Sergeant Coyle. The proceeding was then adjourned until June 24, 2011.
13. On June 24, 2011, the Discipline Authority re-convened the discipline proceeding which was recorded pursuant to the *Police Act*. Staff Sergeant Mike Coyle continued providing testimony detailing the *Police Act* investigation which he conducted. Mr. Kevin Woodall cross-examined Staff Sergeant Coyle and questions were asked by the Discipline Authority. Mr. Woodall requested a transcript of the proceedings to facilitate written submissions and the proceeding was adjourned pending a future date.
14. On September 15, 2011, the Discipline Authority re-convened the discipline proceeding which was recorded pursuant to the *Police Act*. Mr. Kevin Woodall said that Constable Jay Johns would not be testifying. Mr. Woodall presented written submissions to the Discipline Authority and additionally presented verbal arguments. The Discipline Authority adjourned the proceedings for twenty business days and subsequently by way of letter of agreement there was another adjournment until October 21, 2011.
15. On October 19, 2011, the Discipline Authority issued his Notice of Findings (Form 3) in which he found the one count of Discreditable Conduct - Proven. The Discipline Authority found the one count of Deceit – Unproven.
16. On December 7, 2011, the Discipline Authority received submissions on appropriate disciplinary or corrective measures from Mr. Woodall on behalf of Constable Johns.
17. On December 22, 2011, the Discipline Authority issued the Disciplinary Disposition Record (Form 4). After considering a number of mitigating and aggravating factors the Discipline Authority concluded that the appropriate disciplinary or corrective measures for the Discreditable Conduct was a *three day suspension without pay* (based on an eight hour working day).
18. On January 5, 2012, the Discipline Authority issued the Review of Discipline Proceedings pursuant to s. 133(1) of the *Police Act*.
19. On February 1, 2012, on behalf of Constable Jay Johns, Mr. Woodall submitted a request that pursuant to s. 141 of the *Police Act*, I arrange a review on the record of the Discipline Authority's decision.

20. With respect to the Discipline Authority's finding that Constable Johns committed Discreditable Conduct and the Discipline Authority's imposition of a three-day suspension, I do not have a reasonable basis to believe that the Discipline Authority's finding is incorrect or that he incorrectly applied the Act in proposing the discipline and I am not, therefore, compelled by s. 138(1)(c) of the *Police Act* to arrange a Review on the Record on the basis of the incorrectness of the Discipline Authority's decisions.
21. However, pursuant to s. 138(1)(d) of the *Police Act*, I am of the view that a Review on the Record is necessary in the public interest. In arriving at this determination I reviewed all the relevant factors including, but not limited to the following:
- **s.138 (2)(a) *Police Act* – *The nature and seriousness of the complaint or alleged misconduct.*** The misconduct alleged, involves a police officer who purposefully disobeyed the no contact provisions of an undertaking within the context of a criminal charge for domestic violence.
 - **s.138(2)(d)(ii) *Police Act* - *Whether an arguable case can be made that the disciplinary or corrective measures proposed are inappropriate or inadequate:*** I have received a request from Constable Johns for a review of the discipline measure proposed. I am of the view that an arguable case can be made by Constable Johns on one point, namely, that the discipline measure proposed is inappropriate in light of all the circumstances.
 - ***Nature of adjudicative review.*** In the circumstances of this complaint, a review on the record is a more efficient and effective means of adjudicative review having regard to the sufficiency of the record of disciplinary decision and the issues engaged.
22. Therefore, I consider it necessary in the public interest that a Review on the Record be arranged on the sole matter of appropriateness of the proposed discipline and to determine:
- i. Whether or not the disciplinary measures proposed by the Discipline Authority are appropriate in light of all of the circumstances?

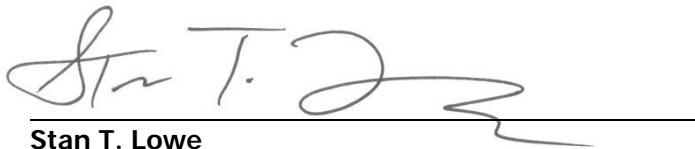
NOW THEREFORE:

1. A Review on the Record is arranged pursuant to s. 138 of the *Police Act*.
2. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, Mr. Leo Nimsick, retired Judge of the Provincial Court of British Columbia, is appointed to preside as Adjudicator in these proceedings, pursuant to s. 142 of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

#501, 947 Fort Street, PO Box 9895, Stn Prov Govt, Victoria, BC V8W 9T8
Telephone: (250) 356-7458 / Facsimile: (250) 356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 9th day of March, 2012.

A handwritten signature in black ink, appearing to read "Stan T. Lowe", is written over a horizontal line. The signature is stylized and cursive.

Stan T. Lowe
Police Complaint Commissioner
for the Province of British Columbia