

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

AND

IN THE MATTER OF [REDACTED]

VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION

TO: [REDACTED] Vancouver Police Department

AND TO: Chief Constable Jim Chu, Vancouver Police Department

AND TO : Mr. Stan Lowe, Police Complaint Commissioner

Introduction

[1] The Police Complain Commissioner has ordered a review of a decision of a Disciplinary Authority not to issue a traffic ticket violation on the ground that the decision appears to be incorrect. It is my duty to review the matter in its entirety and arrive at a decision with respect to [REDACTED]

BACKGROUND

[2] It is alleged that [REDACTED] of the Vancouver Police Department committed the misconduct of neglect of duty pursuant to Section 77 (3) (m) (ii) of the *Police Act* by failing to stop for a red light while operating his police vehicle and thereby causing a collision.

[3] The facts are not in dispute. On [REDACTED] [REDACTED] was operating a police vehicle in a [REDACTED] direction on [REDACTED] in the City of Vancouver. It is not in dispute that he failed to stop for a red light at the intersection of [REDACTED] and [REDACTED] when his vehicle collided with a [REDACTED] which was [REDACTED]

[REDACTED]

proceeding [REDACTED] on [REDACTED]. The emergency equipment on the police vehicle was not activated. [REDACTED] was a front seat passenger. As [REDACTED] entered the intersection he noticed that the traffic light for [REDACTED] traffic was red. The [REDACTED] was driven by [REDACTED]. [REDACTED] said that the light was green for [REDACTED] traffic on [REDACTED]. There were three passengers in the back seat of the [REDACTED]. The passengers confirmed [REDACTED] version of the incident. [REDACTED] one of the passengers, said that traffic light for the [REDACTED] traffic was green. He was taken to the emergency department of St. Paul's Hospital with complaints of low back pain and a headache. The collision was so severe that both vehicles sustained total damage.

[4] [REDACTED] was operating a vehicle that was following the [REDACTED]. He stated that "I was driving [REDACTED] on [REDACTED] towards a solid green light behind the [REDACTED]. The [REDACTED] proceeded into the intersection when a police car heading [REDACTED] on [REDACTED] entered the same intersection and hit the [REDACTED] passenger side of the police car (SIC). The police car didn't have its lights or siren on. The police car had a red light and even after the crash the [REDACTED] light was still green."

[5] The matter was investigated by [REDACTED] of the Vancouver Police Department Professional Standards Section. He recommended that the allegation against [REDACTED] be unsubstantiated. This decision was later confirmed that the Vancouver Police Department had decided that [REDACTED] [REDACTED] would not be issued a violation ticket. The matter was classified as an error in judgment. It was later determined by [REDACTED] that [REDACTED] "will be issued a violation ticket for red light at an intersection contrary to Section 129 (1) of the *Motor Vehicle Act*. [REDACTED] acting as discipline authority made the following comments in an Addendum; stated "[REDACTED] also indicated that in his opinion the Collision Investigation Unit Report should have stated that it was [REDACTED] recommendation to issue a traffic violation ticket as opposed to the report stating that the respondent would actually receive one. The Vancouver Police Department will not be issuing a violation ticket to [REDACTED]". Rather, the Vancouver Police Department wished for the matter to proceed through the *Police Act* process.

[REDACTED]

The Law

[6] The law is not in dispute. It is unlawful under the *Motor Vehicle Act* to proceed through an intersection on a red light without stopping. It is necessary to make reference to the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98, which governed alleged misconduct until April 2010. Sections 4 and 17 of the *Regulation* provide as follows:

Disciplinary defaults

4 (1) In this Code, "disciplinary default" means

(b) neglect of duty

Mental element of default

17 Unless otherwise specified in this Code, a police officer commits a disciplinary default if the police officer intentionally or recklessly committed the act or omission constituting the disciplinary default.

[7] The Police Complaint Commissioner after reviewing the allegations and the evidence concluded that "there is a reasonable basis to believe that the decision of [REDACTED] is incorrect."

[8] I have conducted a review of the whole of the evidence and the applicable law and have concluded that there appears to be sufficient evidence to substantiate the allegation and requires a taking of disciplinary or corrective measures. [REDACTED] while operating a police vehicle entered the intersection on a red light without having the emergency equipment on the vehicle activated. Accordingly, it appeared that the conduct of the officer falls within Section 4 (1)(b) of the Code. In my view this is an appropriate case to offer [REDACTED] a Pre-hearing Conference.

[9] Section 117 (9) of the *Police Act* reads as follows:

[REDACTED]

117(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) [*prehearing conference*] applies

120(3)(b) the discipline authority concludes that

(i) the evidence against the member is sufficiently serious to warrant dismissal or reduction in rank or, in the case of a former member, is sufficiently serious to have warranted dismissal or reduction in rank, or

(ii) a prehearing conference would be contrary to the public interest.

120(16) On approval by the police complaint commissioner, disciplinary or corrective measures accepted by a member or former member and approved by a prehearing conference authority at a prehearing conference constitute a resolution of the matter, which resolution is final and conclusive and not open to question or review by a court on any ground.

[10] In my view the circumstances are not sufficiently serious to warrant either dismissal or reduction in rank. Rather it is an appropriate case for the holding of a prehearing conference. Thus a prehearing conference will be offered to [REDACTED] [REDACTED] He will, under the Act, have the right to request permission to call to examine or cross-examine witnesses provided such request is submitted in writing within 10 business days following the receipt of this Notice of Decision. The scope of disciplinary or corrective measures that is appropriate in these circumstances include the following:

1. A verbal reprimand;
2. A written reprimand.

[REDACTED]

[11] Under section 117(8) of the *Police Act* I hereby give notice to [REDACTED] for the right to make submissions at any disciplinary proceeding.

Dated at Vancouver, B.C. this 22nd day of January, 2015.



The Honourable Wally T. Oppal, Q.C.

[REDACTED]