

DECISION ON REVIEW ON THE RECORD

Pursuant to section 141 Police Act, R.S.B.C. 1996, c.267

In the matter of the Review on the Record into the Conduct of

Constable Felipe Gomes of the Delta Police Department

- To: Constable Felipe Gomes (#1776)
- And to: Chief Constable Jim Cessford
- And to: Mr. Stan T. Lowe, Police Complaint Commissioner
- And to: Mr. Kevin Woodall, Counsel for Constable Gomes
- And to: Mr. Mark R. Jette, Commission Counsel
- And to: Mr. Steven M. Boorne, Counsel to the Discipline Authority

Review on the Record

This Review on the Record was ordered by the Police Complaint Commissioner on 17th February 2015. The sole matter to be determined is the appropriateness of the disciplinary measures proposed by the Discipline Authority (DA) concerning the allegations proven against Constable Felipe Gomes. The standard of review I must apply in this Review on the Record is correctness (Police Act section 141(9)).

The Supreme Court of Canada has defined the standard of correctness in the following terms:

As important as it is that courts have a proper understanding of reasonableness review as a deferential standard, it is also without question that the standard of

correctness must be maintained in respect of jurisdictional and some other questions of law. This promotes just decisions and avoids inconsistent and unauthorized application of law. When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

(Dunsmuir v. New Brunswick 2008 S.C.C. 9 at Para. 50)

Introduction

On January 6, 2015, Discipline Authority Chief Constable Cessford delivered his reasons in the matter of Constable Felipe Gomes.

The allegations against Gomes were as follows:

- i. That after October 22, 2011, and prior to November 19, 2012, it is alleged that Constable Gomes created notes for a police file which he misrepresented as having been made at the time or shortly after the incident. The allegation against Constable Gomes, if substantiated, would constitute misconduct, specifically Deceit pursuant to section 77(3)(f)(i)(B) of the Police Act.
- ii. That on November 21, 2012, January 22, 2013, and October 8, 2013, it is alleged Constable Gomes made false and misleading statements to Professional Standards investigators, in that he claimed to have created police notes for a police file at the time or shortly thereafter when he did not. The allegation against Constable Gomes, if substantiated, would constitute misconduct, specifically Deceit pursuant to section 77(3)(f)(i)(A) of the Police Act.
- iii. That between March 5, 2012, and January 29, 2013, it is alleged that Constable Gomes created notes for a police file which he misrepresented as having been made

at the time or shortly after the incident. The allegation against Constable Gomes, if substantiated, would constitute misconduct, specifically Deceit pursuant to section 77(3)(f)(i)(B) of the Police Act.

- iv. That on August 28, 2012, and on October 8, 2013, it is alleged that Constable Gomes made false and misleading statements to Professional Standards investigators, in that he claimed to have created police notes for a police file at the time or shortly thereafter, when he did not. The allegation against Constable Gomes, if substantiated, would constitute misconduct, specifically Deceit, pursuant to section 77(3)(f)(i)(A) of the Police Act.
- v. That between April 1, 2005, and January 13, 2013, it is alleged that Constable Gomes neglected his duty to keep accurate record in his police notebook, and neglected his duty to maintain his notebook in a manner that conformed to policy and training. The allegation against Constable Gomes, if substantiated, would constitute misconduct, specifically Neglect of Duty pursuant to section 77(3)(m)(ii) of the Police Act.

Constable Gomes at the Discipline Hearing admitted the above allegations. The Discipline Authority (DA) found the allegations were substantiated, and applying section 126 of the Police Act, found that Constable Gomes should be dismissed from the Delta Police Force on allegations #1 through #4, and that on allegation #5, he should receive a suspension without pay for a period of 10 working days.

At the commencement of these proceedings, counsel were in agreement that delict #5 had been dealt with appropriately by the DA, and that I should deal solely with delicts #1 through #4.

The DA in 19 pages of reasons, gives a thorough analysis of section 126 of the Police Act, after hearing submissions from counsel acting on behalf of Constable Gomes.

The facts surrounding the alleged deceits of Constable Gomes were covered by an intensive investigation over a period of 26 months, resulting in numerous interviews, with several thousand pages of reports and exhibits. To avoid creating another copious and repetitive report, I have attached as Appendix #1, a 23 page summary of the investigation.

Counsel for the DA and the Police Complaint Commissioner submit that dismissal is appropriate. Mr. Woodall, Counsel for Constable Gomes, submits that dismissal is not necessary and that a lengthy suspension would be adequate.

Constable Gomes' background

In his submission, Mr. Woodall has set out Constable Gomes' background and work history. Other counsel in the Hearing have not disagreed with this information.

Constable Gomes is 33 years old. He is married and has one infant son. Constable Gomes and his wife are expecting a second child in late June or early July of this year. As a result, Constable Gomes' wife, a registered nurse, will be going on maternity leave shortly.

Constable Gomes has been a member of the Delta Police Department since 2004. He has worked in a variety of assignments, primarily on patrol, and as an officer seconded to the Combined Forces Special Enforcement Unit (CFSEU-BC). Within the unit, he worked in the Gang Task Force (GTF).

Constable Gomes has met or exceeded the standards required of him throughout his career. In his annual Performance Management Appraisals, he has consistently been praised for his integrity, excellent work ethic, and for being a team player. Mr. Woodall identifies examples of typical comments made on these appraisals. Mr. Woodall places particular importance on Constable Gomes' reviews at the time he was seconded to CFSEU.

Constable Gomes has earned an enviable reputation among his superiors, peers and more junior officers within the Delta Police Department. He has received more than 30 letters of

support from co-workers and members who know him by his reputation. He is repeatedly referred to as hard-working, reliable, honest, and a strong mentor.

In 2008, Constable Gomes was awarded the Provincial Police Meritorious Service Medal by the Lieutenant Governor of British Columbia. This is British Columbia's second highest honour for a police officer. Recipients receive a silver military style medal and decoration, and a certificate.

Service Record of Discipline for Constable Gomes

- i. Singh 2009-03: A complaint was received by Professional Standards Section on January 19, 2010, for Neglect of Duty, Discreditable Conduct (x2), for which Constable Gomes received the sanctions of managerial advice, and written reprimand (x2).
- ii. Hulme 2009-13: A complaint was received by Professional Standards Section on February 11, 2009, for Abuse of Authority for which Constable Gomes received a verbal reprimand on September, 2010.
- iii. CIPC-PRIME 2012-48: A complaint was received by Professional Standards Section on June 8, 2012, for unauthorized use of police equipment. Constable Gomes received a sanction of a written reprimand on February 8, 2013.
- iv. Pabla 2012-56: A complaint was received by Professional Standards Section on July 25, 2012, for discourtesy. Constable Gomes received direction to training on August 6, 2013.

Investigation of the Delicts

The incident which led to the allegations which were dealt with by the DA occurred on October 22, 2011, while Constable Gomes was on secondment. A complaint was made to the Delta Police Force which led to an investigation by the Professional Standards Branch. During the investigation, and specifically on October 3, 2012, the investigator asked Constable Gomes for a copy of his original notes from October 22, 2011, with respect to allegations of abuse of authority, discourtesy, corrupt practice, and neglect of duty.

What occurred after this request is described in the 23 pages of Appendix # 1. As the investigation proceeded, it became clear that Constable Gomes had not made notes, and that his notebooks contained more blank pages than pages with any notes at all. In an attempt to satisfy the investigators, Constable Gomes produced notes which he fabricated, claiming that he had made these notes at the time of the incident.

As a result of the request for the notebooks, Constable Gomes' deceptions began to emerge. It appears that the deceit in this case was planned and deliberate, stretching over a period in excess of two years – from August 2012 until November 2014.

On August 12, 2012, Constable Gomes was directed to provide his notes for the Lahkan investigation. After a period of procrastination, he submitted what turned out to be a recently constructed version of events. In November 2012, he again created false notes relating to the Pabla investigation. Over the following 10 months, through three separate interviews with investigators, he continued avoiding the truth. During his final interview in October 2013, Constable Gomes admitted his deception with the notes, and also admitted that he had a learning disability on which he attempted to justify his behaviour.

It is difficult to understand why, after this disclosure, Constable Gomes still avoided telling the truth. Instead, the evidence shows that he spun a web of deception in an attempt to explain the various problems and inconsistencies with his version of events. He continued these falsehoods through two separate requests for further investigation – in March 2014 and September 2014. Finally, just before the hearing on December 1, 2014, Constable Gomes advised that he was prepared to admit that his various versions of events were complete fabrications.

The following evidence is clear and undisputed:

- Constable Gomes had no notebook entries for two separate police files wherein there had been citizens' complaints about his conduct.
- He created lengthy and detailed notebook entries for each of the two separate occurrences where no previous notes had existed.

- Constable Gomes lied on multiple occasions during three separate interviews with investigators over the course of 10 months, claiming to have made notes in both matters at the time of the events.
- During the investigation, he contacted a police officer to advise him that he would be interviewed. As a police officer with his level of experience, Constable Gomes was well aware that this kind of interference in an investigation into his conduct was completely inappropriate and prohibited by section 101 of the Police Act.

ADHD – how this condition affects behaviour

In July 2013, Constable Gomes was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) by Doctor Jim Roche, Registered Psychologist. ADHD is a recognized mental health disorder found in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) of the American Psychiatric Association.

The DA, in his analysis, found that ADHD was not an excuse for the misconduct of Constable Gomes. He said: *it is difficult to find a nexus between his deceit and having ADHD. While the ADHD may go partway to explaining the blank spaces and pages in his notebook, it does not explain his decision to falsify his notes nor his repeated and extensive lying to investigators.*

In my opinion, Dr. Roche explains very clearly the problems that a person suffering from ADHD might well encounter in his employment as a police officer. To quote Dr. Roche:

It is not possible to speak with any medical/psychological accuracy as to the reason Constable Gomes may have left blank pages in his notebooks. I can say that this would be typical behaviour for many individuals with ADHD. An inability to focus or keep up with the activities around him. He reports overall difficulty with goal directed persistence (staying on the task) and has difficulty with complex attention. Often individuals start to develop methods to get around their cognitive deficits. These are sometimes good ideas, and sometimes they are not. Expecting to go back ... in just a minute ... to fix things is a typical plan for someone with ADHD.

They then become distracted and never pull the task back together. This is the type of behaviour I often see patients for, and it is a common symptom that interferes with their work success or with personal relations. Things started in good faith are not completed, and understanding the severity of their behaviour is difficult. Unhelpful behaviours often become a habit, because they reduce anxiety. Planning deficits are commonplace in ADHD.

In my view, the diagnosis of ADHD explains the problems faced by Constable Gomes. I believe that he had two courses of action he could have followed. The first would have been to provide the investigators with his inadequate notebooks and to ask for assistance in overcoming his deficit. He did not choose this route, but chose to attempt to obfuscate and to fabricate evidence that would avoid the consequences of his conduct.

Importance of a police officer's notebook

Every police officer has a duty to keep in his police notebook an accurate and truthful record of events that occur on his shift. Those notes can, at a future time, act as an *aide memoire*, add to the credibility of the officer if he is testifying about events in the past, and reinforce the testimony of an officer in court. The fact that, as admitted, Constable Gomes did not keep adequate notes from April 1, 2005 to January 13, 2013 is very troubling. The notebook of a police officer is an essential tool in his job and the failure to provide accurate notes could have significant consequences.

Jurisprudence with regard to deceit

Mr. Woodall has supplied me with five cases wherein the finding of deceit is proven. In each of these cases, the discipline imposed has not been dismissal. He argues that even though there is no binding precedent, these cases are persuasive in the use of a suspension for Constable Gomes.

I disagree with Mr. Woodall's analysis, as each of the cases he refers to is quite different from the case of Constable Gomes. The facts in each of those cases show deceit for reasons such as momentary mistakes or untruths told to protect a brother officer. As we know, Constable Gomes' case revolves around his unfortunate mental health disorder. His embarrassment to disclose the lack of note-taking, together with his avoidance of the truth and the falsification of documents have been described as typical of those afflicted with ADHD. The consequences of these actions were considerable, resulting in an investigation which took over two years, many hundreds of hours of police time, and thousands of pages of written material.

Conclusion

I have spent considerable time studying this rather complex case. I have read the background material, including the written submissions of counsel and the report of psychologist Dr. Jim Roche. As well, I have listened to the oral submissions of counsel. I have considered each of the elements of section 126(2) of the Police Act, together with section 126(3).

In his summary and conclusion, Chief Constable Cessford says: *In imposing disciplinary or corrective measures, I have considered all of the various aggravating and mitigating factors listed in section 126 (2) of the Police Act, including, but not limited to: the submissions of counsel, penalties in other similar cases, letters in support, Performance Appraisals, family situation, and medical concerns.*

As stated by Adjudicator Pitfield in another case: *The fact that 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.*

I agree with the DA that the allegations as proven against Constable Gomes could affect his ability to testify in a court of law. The judiciary and the Crown might well be reluctant to accept the evidence or to prosecute a case that relied on an officer who had been found guilty of

deceit. Trust in such an officer would have been seriously compromised. That core value of trust involves not only the courts, but the public, the senior officers, the brother/sister officers, and everyone else involved in the administration of justice in our society.

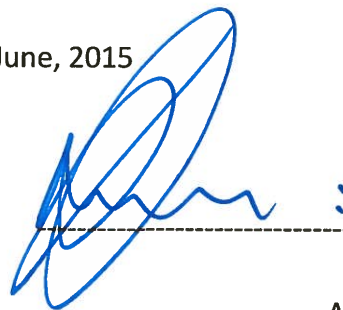
In my opinion, Constable Gomes is no longer able to fill the role of a police officer. The allegations against him, which have been proven, are very serious and lasting in their impact. It is further my view that the only discipline appropriate for delicts #1 through #4 is dismissal. Having concluded my analysis of this matter, I find that I agree with the decision of the Discipline Authority and his conclusion that the misconduct was extremely serious, and that dismissal is the only appropriate discipline.

Applying the standard of correctness to the Discipline Authority's decision, I find that his decision was correct. I agree that the four delicts in this matter justify dismissal. I hereby order that Constable Filipe Gomes be dismissed from the Delta Police Department.

Recommendations:

- 1 It is recommended that, if possible, persons applying to join a police force should be asked to undergo a psychological assessment to determine their suitability.
- 2 It is recommended that the first year in a police officer's employment be treated as a period of probation, with regular checks by senior officers into the performance of the junior officer, including the taking of accurate notes.
- 3 It is recommended that all police officers' notebooks be checked on a random basis to ensure that notes are maintained to conform with policy and training.

Dated at Victoria, British Columbia, this 26th day of June, 2015



Alan E. Filmer, Q.C.

Adjudicator