



Office of the
Police Complaint Commissioner

British Columbia, Canada

RR: 2015-01

OPCC File: 2013-8599
February 17, 2015

NOTICE OF 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) (Member)
c/o Delta Police Department
Professional Standards Section

And to: Chief Jim Cessford (Discipline Authority)
c/o Delta Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On February 14, 2013, the Office of the Police Complaint Commissioner (OPCC) received information from the Delta Police Department (DPD) in relation to the conduct of Constable Felipe Gomes. According to the DPD, during the course of a professional standards investigation into the conduct of Constable Gomes, the investigator encountered issues with the integrity of Constable Gomes' notes and the information he provided during interviews. The investigator recommended that a formal investigation be commenced into these issues.
2. On April 17, 2013, after reviewing the information forwarded by the DPD, I ordered an investigation into the conduct of Constable Gomes pursuant to section 93(1) of the *Police Act*. The DPD Professional Standards Section conducted an investigation into this matter and on January 10, 2014, a Final Investigation Report was forwarded to Chief Constable Cessford, as the Discipline Authority. On January 16, 2014, pursuant to section 98(9) of the *Police Act*, Chief Constable Cessford directed that further investigative steps be taken in relation to this matter. These investigative steps were completed and on February 17, 2014, Chief Constable Cessford forwarded his Notice of Discipline Authority's Decision to Constable Gomes and this office.

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Police Complaint Commissioner

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3. The following allegations of misconduct were identified against Constable Gomes:
 - 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 that Constable Gomes made false and misleading statement 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 on or around March 2012, it is alleged that Constable Gomes: handled a police notebook in such a manner that it became damaged; disposed of this notebook by throwing it away in the garbage; failed to report to a supervisor that this notebook was damaged and lost; and failed to complete and submit a PRIME report detailing the circumstances of the damage and disposal. The allegation against Constable Gomes, if substantiated, would constitute misconduct, specifically Damage to Police Property pursuant to section 77(3)(d) of the *Police Act*.
 - vi. That between April 1, 2005, and January 13, 2013, it is alleged that Constable Gomes neglected his duty to keep an 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*.
4. On March 19, 2014, after reviewing Chief Constable Cessford's decision, counsel for Constable Gomes requested that further investigation occur pursuant to section 114 of the *Police Act*. On March 28, 2014, after reviewing Constable Gomes' request, Chief Constable Cessford directed that a Supplementary Investigation Report be completed in relation to this matter. On April 29, 2014, the Supplementary Investigation Report was forwarded to Chief Constable Cessford.

5. On May 20, 2014, based on the Final Investigation Report and the Supplementary Investigation Report, Chief Constable Cessford, determined that the four allegations of Deceit and single allegation of Neglect of Duty appeared to be substantiated against Constable Gomes. In addition, he determined that the allegation of Damage to Police Property did not appear to be substantiated.

Discipline Proceeding and Proposed Discipline

6. On June 23, 2014, pursuant to section 123 of the *Police Act*, a Discipline Proceeding was convened in relation to this matter with Chief Constable Cessford presiding as the Discipline Authority. Chief Constable Cessford with the agreement of Constable Gomes legal counsel adjourned the Discipline Proceeding so that it could be reconvened at a time when all relevant parties were able to participate.
7. On October 3, 2014, after receiving a request from Mr. Kevin Woodall, counsel for Constable Gomes, Chief Constable Cessford directed that further investigation be conducted in relation to new evidence that had been brought to the attention of the DPD Professional Standards Section in relation to the allegations against Constable Gomes.
8. On December 1 and December 5, 2014, after the completion of further investigation, the Discipline Proceeding was reconvened in relation to this matter. During the proceedings Constable Gomes did not call any witnesses and admitted to committing the four allegations of Deceit and single allegation of Neglect of Duty.
9. On January 6, 2015, Chief Constable Cessford released his findings in relation to each allegation. Chief Constable Cessford determined that the allegations of Deceit and the single allegation of Neglect of Duty against Constable Gomes had been proven.
10. Chief Constable Cessford considered the aggravating and mitigating factors in relation to this matter and determined that the misconduct engaged in by Constable Gomes was extremely serious. As a result, Chief Constable Cessford proposed that Constable Gomes be dismissed from the DPD in relation to each allegation of Deceit. In relation to the allegation of Neglect of Duty, Chief Constable Cessford proposed that Constable Gomes receive a suspension of 10 days without pay.

Constable Gomes' Request for Public Hearing or Review on the Record

11. Pursuant to section 137 of the *Police Act*, where a Discipline Authority proposes as a disciplinary measure dismissal or reduction in rank, upon written request from the police member the PCC must promptly arrange a Public Hearing or Review on the Record.
12. On January 9, 2015, the Police Complaint Commissioner received a request from Constable Gomes for a public hearing or a review on the record. On February 2, 2015, with the assistance of legal counsel, Constable Gomes limited his request to a public hearing, taking

issue only with the proposed discipline and corrective measures, and not taking issue with the substantiation of the allegations.

13. Pursuant to section 137, the Police Complaint Commissioner may arrange a Review on the Record instead of a Public Hearing if he is satisfied, in the circumstance, that
 - (a) it is unnecessary to do either of the following:
 - i. Examine or cross-examine witnesses;
 - ii. Receive evidence that is not part of the record of the disciplinary decision described in section 141(3) of the *Police Act* or the service record of the member or former member;
 - (b) a public hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.

Decision

14. I have reviewed the record of the disciplinary decision, the associated determinations and the submission received from Constable Gomes in support of his request. In my view the investigation into the allegations against Constable Gomes and the discipline proceedings in relation to this matter were conducted in a thorough and professional manner. Constable Gomes is only taking issue with the proposed discipline and corrective measures proposed by the Discipline Authority and not the substantiation of the allegations. Based on the foregoing, I am satisfied that it will not be necessary to examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Furthermore, I am satisfied that a public hearing is not required to preserve or restored public confidence in the investigation of misconduct and the administration of police discipline. I have determined that a Review on the Record is a more effective and efficient means of adjudicative review in all the circumstances. I note that pursuant to section 141(4) of the *Police Act*, in “special circumstances”, an adjudicator has the discretion to receive evidence outside of what is contemplated as the focus of the Review.
15. Accordingly, pursuant to sections 137(2) and 141 of the *Police Act*, I am arranging a Review on the Record. This Review on the Record is arranged into the sole matter of the appropriateness of the disciplinary measures proposed by the Discipline Authority. Pursuant to section 141(9), the standard of review to be applied by the Adjudicator to a disciplinary decision is correctness. The disciplinary measures proposed by the Discipline Authority in relation to each allegation are 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*.

Proposed Disciplinary Measure - Dismissal

- ii. That on November 21, 2012, January 22, 2013, and October 8, 2013, it is alleged that Constable Gomes made false and misleading statement 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*.

Proposed Disciplinary Measure - Dismissal

- 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*.

Proposed Disciplinary Measure - Dismissal

- 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*.

Proposed Disciplinary Measure - Dismissal

- v. That between April 1, 2005, and January 13, 2013, it is alleged that Constable Gomes neglected his duty to keep an 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*.

Proposed Disciplinary Measure - Ten-day suspension without pay.

16. Pursuant to section 141(5) and (6) of the *Police Act*, Constable Gomes, or his agent or legal counsel, and the Police Complaint Commissioner or his commission counsel may make submissions concerning the matter under review. Pursuant to section 141(7)(b) the Adjudicator may permit the Discipline Authority or Discipline Representative to make submissions concerning the matters under review.

THEREFORE:

1. A review on the record is arranged pursuant to section 137(1) and 141 of the *Police Act*.
2. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, Mr. Alan E. Filmer, Q.C., a retired Judge of the Provincial Court of British Columbia is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) 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:

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DATED at the City of Victoria, in the Province of British Columbia, this 17th day of February, 2015.



Stan T. Lowe
Police Complaint Commissioner