

Gabriel M. Somjen  
T 604-640-4013  
F 604-622-5930  
gsomjen@blg.com

Borden Ladner Gervais LLP  
1200 Waterfront Centre  
200 Burrard St, P.O. Box 48600  
Vancouver, BC, Canada V7X 1T2  
T 604.687.5744  
F 604.687.1415  
blg.com



**File No. 550959/000061**

October 31, 2014

BY EMAIL

The Honourable Wally Oppal, Q.C., Adjudicator  
c/o Sylvia Sangha, Registrar  
Office of the Police Complaint Commissioner  
5<sup>th</sup> Floor, 947 Fort Street  
PO Box 9895 Stn Prov Govt  
Victoria, BC V8W 9T8

Dear Mr. Adjudicator:

**Re: Constable Taylor Robinson – OPCC #2010-5401: Public Hearing #2013-05  
Reply Submission of Vancouver Police Union (“VPU”)**

We have now had the opportunity to review the written response submissions of Counsel for the Commissioner, Public Hearing Counsel and Counsel for the Complainant and have the following brief reply.

Role of Commission Counsel

1. Neither Public Hearing Counsel, Commission Counsel nor Complainant’s Counsel responded to our submission that in a public hearing, Public Hearing Counsel “must present to the Adjudicator the case...” (*Police Act* s.143(4)).
2. We submit that this important point is uncontroverted and shows that the process used in this case was inconsistent with the statute.
3. Complainant’s Counsel suggests in his October 31<sup>st</sup> response that without a submission by Commission Counsel, the Complainant would be at a disadvantage. That, of course, ignores

the new role of Public Hearing Counsel. All three Counsel ignore the obvious difference between the old *Police Act* and the new: There is now Public Hearing Counsel who must present the case.

4. At paragraph 62, Commission Counsel refers to the *Gemmell and Kojima* case under the previous *Police Act*, in which the Commissioner himself addressed the issue of appropriate discipline. It is important to note that under the previous *Police Act* the role of Public Hearing Counsel did not exist. That is why we have made our submissions: now that the *Police Act* does have a mandatory role for Public Hearing Counsel, the role of Commission Counsel has changed from the previous *Police Act*.

#### Quantum of Discipline

5. *Police Act*, Section 126(3) - In paragraph 20 of Commission Counsel's submission he suggests at bullet number 3 that in seeking to suspend a member, the discipline authority must already have rejected correction and education as unworkable.
6. With respect, we submit that the wording of s. 126(3) does not allow for that interpretation. It clearly indicates that if the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence. That wording requires that correction and education is the preferred approach even where discipline is being considered. In other words, an approach that seeks to correct and educate applies equally to suspensions as to any of the other disciplinary or corrective measures that are available to the discipline authority.
7. At paragraph 20 Commission Counsel suggests that only discipline authorities have often stayed within the range of discipline given under the previous *Police Act*. However, under the new *Police Act* adjudicators as well have generally been guided by cases under the old *Act*, indicating that those cases are still relevant where discipline of five days or less was appropriate.

### Downtown Eastside

8. At paragraph 24 Commission Counsel suggests that because the VPU did not make a written submission on this point that our earlier submission should not be considered. We did make brief oral submissions in the October 17<sup>th</sup> hearing, particularly with respect to considerations under the Collective Agreement between the VPU and Vancouver Police Board. We submit that those submissions should stand and that our not making further written submissions was done in the interest of brevity rather than because we had abandoned our oral submissions.

### Standing

9. At paragraph 24 of Commission Counsel's submission he suggests that the VPU somehow took advantage of an invitation to make submissions on the Downtown Eastside policing issue... "like the proverbial 'Trojan Horse'...". That is an unfair and inaccurate characterization of the VPU's application for participant status.
10. As soon as the VPU heard of the position taken by Commission Counsel in the hearing (on October 6<sup>th</sup>) the VPU sought participant status (see our letter to you of October 10, 2014). In that letter we made it clear in the penultimate paragraph that we wished to make submissions not only on the Downtown Eastside issue but also on the form of discipline that should be imposed in this matter and the severity of penalties generally under the *Police Act*, as well as the role of the Police Complaint Commissioner in making submissions on discipline.
11. We appreciate that our application was made late in the process but the VPU was not aware of the intention of Commission Counsel or the type of submissions that he was making in this case until the VPU heard of it on October 6<sup>th</sup>. It is not reasonable to say that the VPU could have anticipated this and sought participant status earlier; as we set out in our October 24<sup>th</sup> submissions, Commission Counsel has not before made submissions on the specific discipline in any public hearing under the new *Police Act*.
12. We wish to also point out the inconsistency of Commission Counsel's submissions on the participant status of the VPU. He argues, on one hand, that the VPU should not be allowed to make submissions at this late stage in the process, and yet acknowledges that the VPU

should be allowed to make submissions on the Downtown Eastside issue and on the issue of the changes in the *Police Act* with respect to maximum suspensions.

13. Some of the arguments made by Commission Counsel, if accepted, will have significant impact on all municipal police officers and therefore the VPU should be heard on these important issues because they can speak for all Vancouver Police Department officers.

Conclusion

14. There seems to be a misunderstanding about the VPU's request in this matter. We do not ask to make any further submissions nor ask for any further hearing, but ask that you take our submissions into account in making your decision in this case.

All of which is respectfully submitted.

Yours truly,

**Borden Ladner Gervais LLP**

By:

  
Gabriel M. Somjen

/ed

c.c. Mark Jetté, Public Hearing Counsel  
Sutherland Jetté  
Email: [mrjette@telus.net](mailto:mrjette@telus.net)

c.c. Mike Tammen, Counsel for the OPCC  
Michael Tammen Law Corporation  
Email: [mtammen@tammen.ca](mailto:mtammen@tammen.ca)

c.c. Doug King, Counsel for the Complainant Sandy Davidsen  
Pivot Legal Society  
Email: [dking@pivotlegal.org](mailto:dking@pivotlegal.org)

c.c. E. David Crossin, Q.C., Counsel for Cst. Taylor Robinson  
Sugden, McFee & Roos LLP  
Email: [dcrossin@smrlaw.ca](mailto:dcrossin@smrlaw.ca)

c.c. David G. Butcher, Q.C., Counsel for VPD  
Wilson, Butcher  
Email: [dbutcher@wbbslaw.com](mailto:dbutcher@wbbslaw.com)