

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, C. 267

AND

IN THE MATTER OF THE PUBLIC HEARING INTO THE COMPLAINT  
AGAINST CONSTABLE STEPHEN TODD  
OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DISPOSITION

TO: Constable Stephen Todd, Vancouver Police Department

AND TO: M. Kevin Woodall, Counsel for Stephen Todd

AND TO : Michael Tammen, Q.C., Public Hearing Counsel

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Constable Todd of the Vancouver Police Department has committed misconduct on two occasions by unlawfully using a restricted VPD database. I have already delivered written reasons at the conclusion of a lengthy hearing. Accordingly; I will not repeat the facts in detail.

He has admitted the defaults of corrupt practice of improperly using police data. As well he was found to have committed a default of improperly disclosing the information that he acquired. There were three occasions upon which Constable Todd inappropriately accessed the database. They were in 2006, 2007 and again in 2010. It is important to note that the investigation relating to Owen Padmore's death was closed until 2008. Thus on at least two of those two occasions in 2006 and 2007, Constable Todd's accessing of the data would have been of no consequence. As well in accessing the database on July 18<sup>th</sup>, 2010, he learned that the file was privatized or embargoed. Moreover at that time, he would have had no knowledge of the fact that the file had been reactivated. Thus his actions in accessing the database did not compromise or prejudice the investigation.

In determining the appropriate disciplinary or corrective measures, I am guided by section 126 of the *Police Act* which reads as follows:

**126 (1)** After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [*complainant's right to make submissions*], the discipline

authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, **without limitation,**

(a) the seriousness of the misconduct,

(b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,

(d) the likelihood of future misconduct by the member,

(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,

(f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,

(g) the range of disciplinary or corrective measures taken in similar circumstances, and

(h) other aggravating or mitigating factors.

(3) 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, unless it is unworkable or would bring the administration of police discipline into disrepute.

In determining the appropriate disciplinary or corrective measures, I must of course, consider Constable Todd's background. He is 42 years old and has been a member of the Vancouver Police Department for 12 years. There are a number of mitigating circumstances which must be considered. He has no prior defaults on his service record. His performance appraisals are extremely positive. The appraisals state in part that he is, "an excellent leader in the south street crime enforcement unit" and he has apparently exceeded all expectations in what is termed 6 core components. He is said to be reliable and trustworthy. Thus the likelihood of any future misconduct appears to be extremely remote.

As well, I have had the benefit of reading Constable Todd's statement in which he accepts full responsibility and expresses remorse for the incidents. I am satisfied that the remorse is sincere. He clearly has the support of his family. His wife Brandee Todd who along with Constable Todd's parents, have attended these hearings and filed a letter in which they speak of the emotional and financial impact that this incident has had on the lives of their family. As a result of these proceedings, Constable Todd has been forced to work at a grocery store at a somewhat minimal salary. He has made reference to the embarrassment of friends and family asking him why he is no longer a police officer.

In my reasons I have made reference to the manner in which Constable Todd was treated during the investigation. The VPD first learned about Constable Todd's involvement in October 2010, yet during the interviews of March 2011, the safeguards in the *Police Act* were willfully ignored in that Constable Todd was not given the required five day delay in order to obtain counsel. I think the manner in which he was treated must be considered in the disposition of these proceedings. It is a mitigating factor.

Is it of course settled law that the philosophy of the *Police Act* as it relates to misconduct is remedial as opposed to punitive. This is in essence a first offence. Having regard to the whole of the circumstances and the factors contained in section 126 of the Act, an appropriate remedy is a written reprimand.

### **Recommendations on Policy**

Because the rules of procedural fairness were clearly compromised, I asked counsel about the feasibility of making recommendations under section 143(9) of the *Police Act* to the Chief Constable and to a municipal police board. I agree with Mr. Woodall, counsel for Constable Todd that in this case, policy regarding procedural fairness was simply not followed. While the police were well aware of Constable Todd's exposure under the *Police Act*, they chose to ignore his request for a union representative or counsel to be present at the interview on the basis that they were investigating a complaint under the Criminal Code. This is an appropriate case where recommendations ought to be made to the Chief Constable and the police board. In the event there is any ambiguity as to what the appropriate procedure ought to be in similar circumstances, I think the internal discipline rules of the Vancouver Police Department need to be updated in order to be consistent with the present *Police Act*. While there is a clear obligation under the present Act that the municipal police department must notify the OPCC immediately where there is a possibility that a member may have committed

misconduct under the public trust provisions of the Act, there may still be an ambiguity as far as the internal discipline rules are concerned. I do not think it is unreasonable that an officer who is being investigated for a public trust complainant must at the very least, be afforded the same rights as a person who is the subject of a criminal complaint. As well in my view, all officers who are being interviewed pursuant to an internal investigation, must have the right to have either a union representative or counsel present so that any interview is conducted in accordance with the rules of procedural fairness. An officer must have the right to advice either by access to a union representative or counsel.



The Honourable Wally T. Oppal, Q.C.

This 1<sup>st</sup> day of May, 2015