

PH00-01

4 May, 2001, 10 A.M.

Sidney, B.C.

THE REGISTRAR: In the matter of the public hearing into to the complaint against Constable Graham Maddocks of the Victoria Police Department.

The public hearing is now open. The Honourable Stewart Leggatt presiding as adjudicator.

MR. URBAN: Yes, Mr. Adjudicator, my name is D-a-n-a U-r-b-a-n. I am appearing for the Police Complaint Commissioner.

MR. CONSIDINE: Mr. Adjudicator, I am Chris Considine. I appear on behalf of Constable Maddocks, both as counsel and his agent this morning. Thank you.

THE ADJUDICATOR: Yes.

SUBMISSION BY MR. URBAN:

MR. URBAN: Mr. Adjudicator, this matter is set on the list today for a public hearing into the alleged misconduct of Victoria City Police Constable Graham Maddocks.

The allegations before you consists of two counts of alleged discipline defaults of this officer's code of professional conduct.

Generally speaking, the first count relates to a section 4. That is, improper off duty conduct regarding allegations that he, between September 1st and 6th of 1999, in Greenland, photographed an unconscious naked female.

And count 2, contrary to section 4 of the Code, that he, on or about September 21, 1999, in Victoria, British Columbia, presented for development to a photographic lab, a role of film depicting photographs taken of an unconscious naked female. So on those counts we are here.

Now, due to certain circumstances that I will briefly articulate momentarily, the Commissioner at this time wishes to make to you an application to withdraw his notice of public hearing.

Now, the Commissioner in this case is of the view that given the media coverage of the alleged discipline defaults, and the very nature of the key defaults themselves. That is, it is clearly in the public interest that we appear today in public to set out the reasons why the Commissioner wishes to withdraw.

I wish to begin this application by referring back to the very intent that the legislators had when they enacted the Police Act amendments dealing with the complete police complaint process in 1998.

The intent, very generally, was that after they looked at models of the complete police complaint process that were in place throughout the world as identified by Mr. Justice Oppal in his lengthy inquiry into this issue, decided to adopt the process that we have.

And that, very generally speaking, is to allow the police in this province to police themselves regarding matters of any allegations of their own misconduct.

But at the same time having this whole process overseen by a commissioner, who is impartial and independent of the police, and independent in fact of government.

In short, the commissioner is required in performing his duties to impartially consider three basic things.

Number one, is what in fact did Constable Maddocks do.

Number two, how did the Victoria City Police themselves handle this matter.

And three, all factors that in one way or the other affect the public interest in the process.

In doing so it must be remembered that under the Police Act we are not dealing with criminal matters.

It is not criminal proceedings where sanctions include, for example, incarceration.

If a public hearing proceeded today in the traditional adversarial sense and had the Commissioner been able to establish on a civil burden of proof the balance of probabilities that Maddocks had in fact committed one or both of the allegations, the maximum penalty that you, as an adjudicator, could impose upon Constable Maddocks would be dismissal from all British Columbia municipal police forces.

So simply put the bottom line is if those complaints were met the best that could be said is Constable Maddocks could no longer be a police officer.

So with that general back drop in mind dealing now specifically with this case and this application to withdraw, there are a number of relevant factors that were considered by the Commissioner in determining that this process here today would be in the public interest.

And those factors are firstly the personal antecedence of Constable Maddocks himself.

He is now fifty-four years of age; turning fifty-five in June. He was born and raised in England. He is single and he has no children. At age twenty in 1966 in London, England he trained for and became a member of the London Police Force. He remained as such for four years. At that time he decided to travel to Bermuda, at which time he became a police officer there and was such for eight years.

On April 1st, 1978, he travelled to Victoria, British Columbia where he was sworn in as a police officer with that force.

He performed his duties as a police officer until September 21st, 1999, when he was suspended by the Chief Constable immediately after the Chief Constable became aware of the subject matter of these proceedings.

And from that date until now he has, in one form or the other, been relieved of all police duties that would entail any contact with members of the public.

So either by way of administrative assignments, or by suspensions, the public was, in effect, protected by the actions of the police.

In looking at his personnel file there is no recorded record of any prior disciplinary defaults nor any convictions under the Criminal Code.

The second consideration that forms the basis for the commissioner deciding to take this position is the factual foundation supporting the accounts alleged.

As alleged. I understand that my learned friend in his submission will accept those allegations. So those allegations very briefly are these:

That in September of 1999 when the respondent was off duty and on vacation in Greenland he visited a small community and while doing so he met a twenty-four year-old Inuit Greenlander, who prior to that time, was unknown to him.

She met him. She saw him in a restaurant. She approached him thinking that he was Danish. And when she learned that he was Canadian, and spoke the English language, that interested her as she was then wanting to learn the English language.

So shortly after meeting she started consuming alcohol. She had three or four double vodkas and three or four Tuborg beer. And after certain discussions she returned with the respondent to his hotel room.

The respondent brought more beer, and she along with he, consumed beer in that hotel room. As the evening progressed there was consensual sexual relations including intercourse.

On the following day they met again later in the evening and more alcohol was consumed. She again returned to his hotel room where they drank again and where they again had consensual sexual intercourse.

On both occasions she was highly intoxicated and on at least one of those occasions she consumed sufficient alcohol to become, in her words, "dead drunk".

On the following day after the second incident the respondent left the small community to carry on his vacation and he left with her his name and address for future contact.

At no time did she ever consent to any photographs being taken of her. Though the respondent had been drinking during this two day, two evening period of time, at no time was he intoxicated such that he did not know what he was doing.

Time passed. He returned from his vacation and when he did so on September 21st he took in a roll of film, thirty-six exposures.

The lab technician who developed that film became deeply concerned by twenty-one of those photographs. The technician was so concerned as to the health and well being of the female person depicted in the photographs that she immediately phoned the Victoria City Police.

The police responded, picked up the prints, had a look at them, and took immediate action. And, frankly, when they first looked at the photographs they felt that it was a reasonable possibility that the person depicted was deceased.

They immediately brought in the respondent and showed him the photographs. He immediately acknowledged taking the photographs. The photographs themselves, very generally speaking, depict this female on a bed in an unconscious state. Having been posed by Constable Maddocks in various positions on this bed.

Though, some of the photographs contain pictures of her face, the concentration of the photography was close up photography of her genitalia and breasts.

When he was shown these photographs he explained that the taking of these photographs exhibited poor judgment on his part.

He said that the photographs were all taken on the same occasion. In his words he described them as they were very raunchy photos displaying very bad taste and very bad judgment.

He stated to the senior investigators at that time that he had been drinking, but he was not drunk.

He asked them to immediately convey to the female complainant his sincere apologies for any embarrassment that these photographs may have caused her.

He admitted, and does now admit, that he took those photographs without her consent or knowledge for that matter.

So the fourth consideration is the impact on the victim. As I say, this female was Inuit. She's basically an uneducated person from a very small community.

She has performed menial jobs such as waitress, cleaning lady, and worked in a shrimp factory from time-to-time.

During this investigation the Victoria City Police sought the international assistance of Interpol Copenhagen to find this lady to see if she was alive and what the circumstances were behind these pictures.

As a result of that, Interpol Copenhagen forwarded the photos to law enforcement authorities in Greenland, who then forwarded the photographs to the small community in which this lady lived. So the locals now had these various explicit photographs. When they looked at the face in the photographs they immediately knew who the lady was and they knew of course that she was alive. But as part of the investigation she was summonsed to the local police detachment and shown the twenty-one photographs of herself.

She states that she was shocked and humiliated to see such graphic pictures of herself in the nude and having her private parts displayed in the manner that they were.

She was further humiliated and upset that people in her small community, by looking at these photographs, had become very knowledgeable about her intimate parts and concerned about the spreading of the word or comments that might be made in the future.

She was emphatic with the authorities that she at no time ever consented or had any knowledge whatsoever that any photographs were taken.

She is adamant that had she been asked, or had she known that those photographs would have been taken, that she would have never consented to that. Sexual intercourse was one thing, but this was totally beyond her realm.

The fifth factor that the commissioner has considered is how the police policed themselves. So in addition to what I have already said, i.e., the respondent being assigned to either administrative duties or just sent home, suspended, he was required to forthwith surrender his firearm and police identification.

He was suspended after the completion of the police investigation that was lengthy because of the international channels that one has to follow.

He was then suspended firstly with pay on December 14, 1999. That was as a result, and the commissioner accepts that the Victoria City Police and Interpol investigation was a full and proper investigation.

And the Commissioner also acknowledges that the Victoria City Police Department fully cooperated with the office of the Police Complaint Commission.

After reviewing the entire report the Victoria City Police Board then suspended without pay the respondent on May 26, year 2000.

He has remained on that status, subject to an agreement that I will refer to momentarily, he has remained on that status to today's date.

It should also be noted at this point that the events in Greenland, nor the possession of these twenty-one photographs, now matter how disgusting those photographs are, are not crimes in this country. As such, Maddocks is not subject to the provisions of the Criminal Code.

The sixth, and perhaps a very important factor in the Commissioner's consideration of this matter, is a step that was taken subsequent to the investigation and subsequent to the ordering or the filing of the notice of public hearing.

And that is that at the request of counsel for the Commissioner. Constable Maddocks consented to something that he was not required to consent to. That was to attend for a full psychiatric assessment by a forensic psychiatrist of Commission counsel's choosing.

And to turn over to that psychiatrist, so that a proper assessment could be done, all medical records. And to consent to commission counsel providing to the forensic psychiatrist a full set of circumstances so that the psychiatrist could consider them.

The psychiatrist chosen by counsel was Dr. Shabraham Lohrasbe. A well respected forensic psychiatrist in this province. So with that cooperation by the respondent Dr. Lohrasbe did a full assessment interviewing the respondent at length.

Dr. Lohrasbe has filed or has provided counsel with a significant and lengthy and enlightening report with respect to this matter. To shorten proceedings here I wish to just convey some of the things that flowed from that report.

In his assessment what has become clear to Dr. Lohrasbe is that, amongst other things, that the respondent has been suffering from physical and mental health issues for a number of years. Of significant relevance to Dr. Lohrasbe is that the respondent was diagnosed in 1990 as having a bipolar major affective disorder. Otherwise known as manic depression.

Throughout the years he has been on varying types of medication including lithium. He has suffered for many years with acute insomnia, enhanced anxiety, and significant depression.

Lohrasbe in considering everything including those things that I have mentioned was of the opinion that, in his words, without attempting to trivializing the degradation of the sleeping individual. Those are his words. He felt that the photographs were pornographic as opposed to being sadistic, voyagistic, or of a forensically sexual deviant.

Specifically, Dr. Lohrasbe states: "Overall, therefore, the photographs do not raise any concerns beyond the obvious. That is, that they are degrading intrusions on a sleeping woman. They do not by themselves represent any particular sexual deviancy".

Dr. Lohrasbe then goes on and says that poor judgment is a common feature in the mood disorder particularly those displayed by the respondent. And poor judgment is especially common in those prone to hypo manic or manic episodes. He states that people prone to such bipolar symptoms express a lost of inhibition and behavioral restraint.

And finally he adds, and I quote. "Even conservatively minded men and women when manic or hypo manic indulge in risky promiscuous behaviour and are subsequently appalled by their actions".

Dr. Lohrasbe, looking at the whole of the picture, says that his recommendations would be that the respondent be encouraged to forthwith attend the Sleep Disorder Clinic at UBC and to obtain a referral to a Mood Disorder Clinic at UBC. And that he should be discouraged in his use of hynotics and alcohol.

Dr. Lohrasbe also recommends that he be encouraged to develop a long term psychotherapeutic programme.

So as a result of all that that I have quoted, and based on the entire report in the circumstances, the commissioner is satisfied from a medical point of view, if you wish, that the respondent's conduct in this case was a result of health issues that led to bad judgment, linked to certain mental disorders, and there is no factual or medical basis to consider him a sexual predator.

The seventh factor taken into account in making this application is the post-investigation conduct, if you wish, of the Victoria City Police Chief Constable Battershill, and the Victoria City Police Board. The position of the Chief Constable, that has been accepted by the respondent, at approximately 7:30, 8:00 last night, as was ratified by the Victoria City Police Board, is this:

The respondent will be paid to December 31st, year 2000.

Two, that the respondent will forthwith resign as a member of the Victoria City Police effective December 31st, 2000.

Three, that there be no special accommodation with respect to his pension benefits. This in itself is not insignificant.

He will take a penalty by retiring early both on its face, but as well it prevents him from building a higher pension because he has a little bit more than five years that he would have been eligible to continue to be a member of the police force that has been taken away. So that position by the Chief Constable has resulted in a significant pension disruption.

Fourth, the respondent has agreed in writing not to seek locally or internationally any of the following positions: A, a reinstatement with the Victoria Police Department; b, employment with any other police agency. And, c, employment involving an investigative nature.

Five, that the respondent has agreed that should anyone approach anyone involved in any way with the law enforcement-- should the Victoria City Police be approached by anyone in that field that the respondent has agreed, and it forms part of his file, that the transcripts of the submissions here in open court today will be made available to those persons so inquiring.

Furthermore, number 6, the respondent consents to the Victoria City Police releasing to any such persons, and certainly to the office of the Police Complaint Commission, copies of all documents and agreements of the nature that I have described to the office of the commissioner.

So based on those factors, and I appreciate that there are other factors, but based on those factors the factual foundation.

And then upon considering other important factors, those being legal factors, such as are set out in section 6 (5) of the Police Act, i.e., the public interest factors and the general principles of sentencing, not so much in a criminal context, but in discipline default matters, i.e., they are similar protection of the public, punishment, rehabilitation, deterrence, remorse.

Looking at those factors the Commissioner has looked at the factual foundation and has come to these views.

Firstly, he is of the view that the public interest factors set out in section 60 (5) (2) in particular. Firstly, assuring that the truth is ascertained in police conduct, and in the investigation of themselves.

And two, preserving public confidence in the complaint process and the police themselves.

So he is of the view considering those factors that what has happened here has been satisfied by the actions taken by the respondent, by the Victoria Police Department, specifically set out in the agreement that I have referred to.

And that the actions taken by them will result in Maddocks losing his lifetime occupation and a significant amount of income.

The results in the significant penalty to his pension and it has caused him to incur significant legal costs. His name has been published on a number of occasions and broadcast. He has suffered significant embarrassment, shame, and lost of respect.

Further, the Commissioner is of the view that by agreeing to this agreement with the police he has shown some remorse. That is, in addition to his immediate request that the apology be conveyed to the complainant.

By the actions he has taken, both in the investigation and this agreement that I have referred to, he has shown some remorse.

By effectively resolving this matter the way that he has he has saved this uneducated Inuit female from further trauma of leaving her small community and travelling to a foreign city and being placed in a public courtroom and being asked to describe very private matters.

Three, by effectively resolving this matter in the manner that he has, he has clearly saved the taxpayers of this province significant tax payer dollars.

Fourth, the Police Complaint Commissioner, as an independent and impartial observer, is satisfied that the police in this case in policing themselves have fully investigated the matter and have acted properly and in the public interest in their entire conduct in disciplining of the respondent.

And then lastly, the Commissioner is of the view that the entire process itself, the entire police process from investigation to conclusion, that together with the shame, embarrassment, lost of status in the community for Maddocks, and his significant past and future and economic lost is, in fact, sufficient punishment for his misconduct so as to deter any other like minded police officer, if you wish, from being involved in this type of off duty conduct.

The Commissioner is of the view that given the discipline handed out by the police, and all of those other factors, and Lohrasbe's psychiatric report, that the actions taken are sufficient to protect the public from any future bad judgment on the part of Constable Maddocks.

So for all of those reasons, Mr. Adjudicator, the Commissioner's position is that each case must be decided on its own merits. And that in this case it could be seen to be appropriate and just to allow his application to withdraw. Thank you.

MR. ADJUDICATOR: Thank you very much.

MR. CONSIDINE: Thank you, Mr. Adjudicator. I do not oppose what has been stated by my learned friend in these proceedings.

Constable Maddocks was dismayed when he learned of the photographs. And, of course, upset by the subsequent revelation to the young lady and embarrassment she has suffered. And as you heard he apologized immediately with respect to this matter. He is a man who is nearly fifty-five years of age who has had a distinguished policing career for thirty-five years as my friend has said without blemish on his career.

It is a deeply tragic and sad matter for Constable Maddocks to have this incident occur.

He had been seeking help over the years to try to help him with his difficulties. And he continues to be, with the assistance of his physician, to seek that help.

Unfortunately, those with bipolar disorders cannot always totally control their behavior in these sorts of circumstances in terms of conflicts of events can occur which lead to this tragic situation. A combination I suspect of stresses that he had in his life. Including his work. Alcohol. As he said to the police officers poor judgment led to this tragedy.

He has shown remorse, as my learned friend has said. He has paid the ultimate penalty by taking early retirement with the loss of full pension benefits. And a loss to increase his pension as well as being able to work an additional five years if he had chosen to do so past his retirement date, which he could have taken in June of this year.

For all the reasons that have been stated by my friend, I do not oppose his withdrawal application, and I support it. Thank you, Mr. Adjudicator.

THE ADJUDICATOR: Thank you. May I ask one question which I want to make sure that I have all the information and the facts. He has no children? Was he single at the time?

MR. URBAN: Yes.

MR. CONSIDINE: Yes.

MR. ADJUDICATOR: I will take a little time to put some notes together and give you some reasons with regard to the application by the commissioner.

I'm wondering if we could resume this at 2 o'clock. Would that satisfy counsel or is everyone under some time constraints here?

MR. URBAN: I am available.

MR. ADJUDICATOR: I am disposed to the motion. I simply think that the public are entitled to a review in terms of my look at this thing and the way it has been handled.

Okay?

One other question. There was no initial complaint from the victim here in the photographs; is that correct?

MR. URBAN: That is correct. It was a police generated complaint.

THE ADJUDICATOR: Police generated complaint. Only through Interpol was she made aware of the facts that she had been victimized?

MR. CONSIDINE: Indeed. I might add that the police in Greenland were very thorough in questioning her with respect to the entire chain of events. It became abundantly clear to everybody it was a consensual relationship throughout.

MR. ADJUDICATOR: Possibly there was a civil wrong here, I think. Mr. Considine would be more familiar with the subject of privacy than I am. 2 o'clock is satisfactory?

MR. CONSIDINE: I will make arrangements. That's fine, thank you.

PROCEEDINGS ADJOURNED TO 2 O'CLOCK FOR RULING:

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THE ADJUDICATOR: (Oral).

This is an application by Commission counsel, Dana Urban, which is agreed to and accepted by Mr. Considine, counsel for Constable Maddocks. The application is to withdraw the notice of public hearing, and to consider approving the disposition of complaint as agreed to by the commission and by the respondent.

The essential complaint was laid under Section 16 of the Code of Professional Conduct Regulations alleging improper off duty conduct on the part of Constable Maddocks.

The factual foundations of the complaint is as follows: Constable Maddocks, then aged fifty-three, was off duty and on vacation in Greenland. He met a twenty-four year old Inuit girl. She became interested in him because she wished to learn more of the English language. They drank together. She drinking three or four vodka and some Tuborg beer.

She went to Constable Maddocks's hotel room and they had consensual sexual intercourse. The next evening they met again. More drinking took place and, again, they returned to Constable Maddocks's hotel room. Both were highly intoxicated and the lady in question described herself as being "dread drunk".

The following day Constable Maddocks left for Victoria, but left his name and address with the lady for future contact.

At no time did the lady consent to having her photographs taken.

Constable Maddocks had taken some twenty-one photographs of her showing various poses. Some depicted close-ups of the genitalia and breasts. The lady appeared to be unconscious in the photos. Constable Maddocks took that film to be developed in Victoria. The technician at the photo lab became concerned. She thought the photos depicted a deceased person. She contacted the Victoria Police and they conducted an investigation. Part of which was contacting Interpol in Copenhagen. Interpol was able to trace the whereabouts of the lady to her village in Greenland. Clearly, it has had an impact on the victim. She was shown the twenty-one photos and she expressed shock and humiliation. She was also naturally upset that her reputation in that small community would suffer.

Constable Maddocks was suspended with pay on December 14, 1999, and required to surrender his side arm. On May 26, 2000, he was suspended without pay until today's date.

Constable Maddocks is now fifty-four and will be fifty-five in June. He is single and has no children. He started his career as a London police officer. He later moved to Bermuda and joined the police force there. In April of 1978 he joined the Victoria Police Force.

Up to now he has had an unblemished career with no recorded incidences of discipline defaults. That is thirty-three years of service. These are clearly deeply tragic events for Constable Maddocks. When the matter came to the attention of his Chief Constable, Constable Maddocks expressed immediate remorse. He consented, though not required, to psychiatric assessment.

Dr. Lohrasbe, well-known to these courts, diagnosed Constable Maddocks with a bipolar or manic depressive disorder. Without trivializing the events, he described the invasion of this lady's privacy as non-deviant and non-sadistic, but clearly a degrading intrusion into the privacy of a sleeping female.

He also described this bipolar condition as one that can lead to lost of inhibitions and poor judgement and risky behavior.

Dr. Lohrasbe recommended that he be referred to a mood disorder clinic and I believe a sleep deprivation clinic. The constable, as far as I know, complied with these recommendations.

The commission is now satisfied that he does not fit the profile of a sexual predator. Chief Constable Paul Battershill has recommended, and this recommendation has been ratified by the Victoria City Police Board, the following:

Constable Maddocks will be paid up to December 31st in the year 2000. He will resign effective December 31st, 2000. No special accommodation will be made in his pension benefits. He is penalized by retiring early with a significant lost in his future pension benefits.

Constable Maddocks agrees not to apply for reinstatement in Victoria, nor for employment with any other police agency, nor for any employment as an investigator.

On reviewing the proposed disposition in this matter I am satisfied that the public interest factor under the Act have been fully satisfied.

Constable Maddocks has lost his lifetime occupation. He has lost a significant amount of future income. He has the burden of legal costs. His name has been

published and broadcast and thereby suffered severe embarrassment, shame, and a loss of respect.

He has expressed remorse throughout, both initially, and through the acceptance of this proposal for disposition.

He saved the taxpayer sufficient sums by not insisting on a full and complete hearing. And perhaps more importantly saved the necessity of having this lady in question from testifying at a public hearing with all the trauma and embarrassment that that normally entails.

I am satisfied that all the elements of specific and general deterrence have been clearly met by the proposal. I am also satisfied that rehabilitation is likely a non-factor here.

I suspect that Constable Maddocks will go on to live, hopefully, a reasonable retirement. And the last thing I would like to say is to congratulate Chief Constable Battershill and his staff for the forthright, open and effective manner with which they have approached this matter. Clearly, the public interest was foremost in their minds throughout, and has been served.

I congratulate both counsel for arriving at this disposition. Accordingly, the motion to resolve the matter, as proposed by counsel, is accepted. Thank you both.

PROCEEDINGS ADJOURNED