

## **Reasons by the Adjudicator**

June 18, 2002  
Vancouver, B.C.

PH 00-02

THE REGISTRAR: Order.

In the matter of the public hearing into the complaint against Sergeant Sherron Bayley and Constable Jodyne Keller of the Vancouver Police Department. This hearing is now open, the Honourable Mr. Kenneth Scherling as adjudicator.

THE ADJUDICATOR: Before dealing with the reasons, I will say that Madam Registrar has a copy of the reasons which she is going to have typed by the court reporter and distributed to counsel, so it might be a couple of days. The following is the judgment.

### **Introduction**

1. This proceeding is governed by the provisions of the Police Act, R.S.B.C., 1996, chapter 367 and amendments thereto. Part 9 provides a statutory

framework for a certain level of civilian oversight into the conduct of municipal police officers. The Police Complaint Commissioner is authorized to investigate complaints against police officers, to review disciplinary proceedings of police forces, and can order "public hearings" into alleged misconduct of police officers.

2. The public hearings are to be conducted by "adjudicators." Their function is to decide on a balance of probabilities whether a police officer has committed a disciplinary default under the Code of Professional Conduct Regulation, B.C. regulation 205/98. If there is a finding that default occurred, the adjudicator shall impose a disciplinary or corrective measure under section 19 of that Code, which varies from a written reprimand to dismissal.

## **This Proceeding**

3. On December 12th, 2000, a Notice of Public Hearing was issued by the Police Complaint Commissioner directed to Sergeant Sherron Bayley and Constable Jodyne Keller, also known as Dyck, and to four other respondents, all members of the Vancouver Police Department. The notice, Exhibit 1, sets out ten counts of alleged disciplinary defaults against the respondents in relation to their conduct during the execution of a search warrant on March 4th, 1998 at apartment 1 - 2273 Commercial Drive, Vancouver, and while they testified at a criminal trial between September 21st and 24th, 1999.
4. Alleged disciplinary defaults against the four respondents were withdrawn by Commission counsel during the course of these proceedings.
5. The public hearing commenced with a Case Management Conference on January 23rd, 2001. A further eight conferences were held on various dates until their conclusion on June the 10th, 2002. On June 10th, 11th, and 12th, evidence was heard from 11 witnesses. On June 13th, Commission counsel closed his case after filing the remaining exhibits.
6. Exhibit 10 was titled "Amendment to Notice of Hearing - Count 1." It sets out alleged disciplinary defaults that Bayley and Keller, between March 4th, 1998 and September 13th, 1999, engaged in discreditable conduct contrary to section 1(a) of the Police (Discipline) Regulation, B.C. Reg. 330/75, Appendix A, and section 4(1)(a) of the Code. In addition to an allegation of destroying personal property by emptying the contents of one bottle of liquor by each respondent and the taking of a photograph with Denault's camera by the respondent Keller, there is an additional allegation against each respondent. It is that they did, from March 14th, 1998 to September 13th, 1999, fail to report to an officer and to Crown counsel information or evidence material to the prosecution.
7. Both respondent counsel stated that their clients admitted that the disciplinary default occurred and the adjudicator made such a finding.
8. Exhibit 6 was titled "Admissions." The document includes a "Notice of Decision" and an "Admission of Discipline Default and Acceptance of Disciplinary and/or Corrective Measure." In December, 2000, both respondents admitted the discipline default and accepted the disciplinary measures on allegation 1: namely, suspension without pay for three scheduled working days.
9. Submissions By Commission Counsel

Mr. Doyle admits the following: a, the disposition should be the same for both respondents; b, the appropriate disposition should be a suspension without pay for four or five days rather than the more serious forms of discipline; c, Section 19(2) of the Code should apply here, where corrective measures take precedence over those that seek to blame and punish; d, there is little case-law on failure to report. He did refer to a Case Summary from Ontario, Board File number C026/92, involving the complainant Foley and a police officer Kirby. The officer failed to report a statement which was relevant to the defence at a criminal trial. The penalty imposed was forfeiture of two days pay.

#### Submissions By Mr. Peck, Counsel For Sergeant Bayley

10. Mr. Peck submits that this process is similar to a sentence appeal and the tribunal should look at the corrective measures already applied. Counsel then dealt with the background of Sergeant Bayley.

She was born March, 1956, in Vancouver, and is presently 46 years old. She joined the Vancouver Police Department on August 3rd, 1976 when she was 20 years old. She now has 26 years service. She has served the department honourably and has received four commendations, which were in 1977, 1992, 1996, and 1998. She is highly regarded on the force and has been a mentor. She lives in Delta and is married to a sergeant in the R.C.M.P. who is a member of Vancouver Major Crimes. They have a son. She has also been a board member for the Boys & Girls Club in Delta during 2000 and 2001. Counsel further states she had a clear record until this incident, which has had extraneous effects. It has resulted in a suspension and her having to take a course in search warrants. She was

a constable at the time, on March 4th, 1998, and was promoted to sergeant in 1999, and was also placed on probation for six months. Mr. Peck further submits that section 19 of the Code is discretionary and went through the aggravating and mitigating circumstances in section 19(4) as they applied to Bayley. He also referred to a disposition on the Commissioner's website where a failure to report resulted in a verbal reprimand. Mr. Peck concluded that since Bayley had

already served a sanction, there was no need for anything more than a reprimand or, in the alternative, a concurrent disposition pursuant to section 61(6)(c) of the Police Act "to affirm...the disciplinary or corrective measures proposed by the discipline authority."

## Submissions By Mr. Donaldson, Constable For Constable Keller

11. Mr. Donaldson stated that he adopted all the remarks and submissions of Mr. Peck, especially with respect to section 19. He filed a detailed booklet of materials, which included background material concerning Keller, a so-called penalty report, submissions, and 12 letters of reference from police officers, family members, et cetera. The letters are all self-explanatory and indicate her good character and dedication to police work. It is somewhat unusual for a family to have so many members, past and present, who have had careers in policing with the Vancouver Police Department.

Counsel in his submissions and material dealt with the background of Constable Keller. She was born July 20th, 1971, in Vancouver, and is presently 30 years old. She joined the Vancouver police department in November, 1995 after being with the Canadian Forces Military Police. As a result of this incident, she has also suffered. She was suspended for three days without pay and taken off active service for approximately nine months. She also comes from a close-knit family, which probably has given her much support during these difficult times. She has demonstrated remorse like Sergeant Bayley by accepting the punishment of the internal discipline authority. Mr. Donaldson concludes in his material by

submitting "it is a fundamental principle of imposing a 'sentence' that it must be proportionate to the gravity of the delict and to the degree of responsibility of the offender." He submits that no additional suspension would be proportionate to the gravity of the delict, bearing in mind the punishment previously imposed. In summary, he says, no additional penalty is necessary.

## Conclusion

12. Section 19(1) of the Code provides that after a disciplinary default has occurred, the discipline authority may impose one or more of the disciplinary or corrective measures in relation to the police officer concerned, as set out in (a) to (h). The penalty imposed in this case by the internal discipline authority was pursuant to (d), suspension without pay for three working days. Section 19(4) states that aggravating and mitigating circumstances should be considered: a, even though the pouring out of the liquor is not the most serious breach, the failure to report may be an aggravating circumstance; b, both respondents have an excellent record of employment with no record of discipline prior to this incident; c, the impact of the disciplinary and corrective measures has had an impact on both respondents; d, the likelihood of future breaches of this Code are

unlikely; e, both respondents have accepted responsibility for the breaches by their admissions.

In considering all these circumstances, the submissions of counsel, and the exhibits, including the fact that the respondents have suffered the stigma of going through an internal disciplinary investigation and public hearing, it is my view that this tribunal should and does confirm the disciplinary or corrective measures imposed by the discipline authority pursuant to section 61(6)(c) of the Police Act.

MR. PECK: I should just say on the record that on behalf of myself and Mr. Barclay and Mr. Donaldson, we appreciate the fair and reasonable manner with which Mr. Doyle conducted this hearing and we are grateful for his approach. Seeing as how this is probably the last time I'll ever be in front of you, I must say it's been a pleasure again, sir.

THE ADJUDICATOR: Thank you, Mr. Peck.

That will be on the record, Mr. Doyle.

MR. DOYLE: Thank you. Thank you, sir.

THE ADJUDICATOR: I must comment just in closing that I think both Sergeant Bayley and Constable Keller have been well represented in this matter by their counsel.

Thank you.

THE REGISTRAR: Order.

(PROCEEDINGS CONCLUDED)

SIGNED

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The Honourable Kenneth J. Scherling  
Adjudicator