IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

IN THE MATTER OF CONSTABLE

DECISION ON DISCIPLINE PROCEEDING

TO: Constable

AND TO: Staff Sergeant

AND TO: Complainant

AND TO: Mr. Stan Lowe, Police Complaint Commissioner

AND TO: Mr. Michael Tammen, Counsel for Police Complaint Commissioner

AND TO: Mr. David Butcher, Counsel for Constable

Introduction

[1] Constable , a member of the is charged with the disciplinary default of deceit as a result of statements made to Staff Sergeant in the course of an investigation into a complaint surrounding her entry to a residence at in on the night of March 23, 2009.

[2] The charge is framed as follows:

> That on June 15th and December 2nd, 2009 acted in a manner, to wit: in the capacity of a member, made or procured the making of an oral statement, that to the member's knowledge was false or misleading, that if proved would constitute misconduct pursuant to section 77(3)(f)(i)(A) of the *Police Act*.

[3] The reference to misconduct under a section of the *Police Act* is in error as, at the time the statements were made, misconduct was governed by the *Code of Professional*

Conduct Regulation, B.C. Reg. 205/98 (the "*Regulation*"). Section 7 of the *Regulation* provided as follows:

> 7 For the purposes of [identifying a disciplinary default], a police officer commits the disciplinary default of deceit if
>
> (a) the police officer makes or signs a false, misleading or inaccurate oral or written statement or entry in any official document or record

[4] Section 17 of the Regulation was relevant to the allegation of deceit:

> 17 Unless otherwise specified in this Code, a police officer commits a disciplinary default if the police officer intentionally or recklessly committed the act or omission constituting the disciplinary default.

[5] The *Regulation* was replaced by legislation to similar effect when the *Police Act* was amended effective March 31, 2010. Section 77(3)(f)(i)(A) now provides as follows:

> (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:
>
> ...
>
> (f) "deceit", which is any of the following:
>
> (i) in the capacity of a member, making or procuring the making of
>
> (A) any oral or written statement
>
> ....
>
> that, to the member's knowledge, is false or misleading.

[6] In my opinion there is no substantive difference between the *Regulation* and the *Police Act* in relation to the disciplinary default of deceit, but should that not be the case, then in this instance the *Regulation* prevails. It follows that if the officer is to be found to have committed the disciplinary default of deceit, the oral statements made to Staff Sergeant must have been false, misleading or inaccurate, and the officer must have intentionally or recklessly made the false, misleading or inaccurate statement or statements.

Circumstances Leading to Allegation of Deceit and the Disciplinary Hearing

[7] On the evening of March 23, 2009, Const. was working a twelve-hour shift exchange for another officer. She was working with officers who were not part of her regular patrol. As Const. testified, she liked to be kept busy and, looking for something to do with her time on the night in question, she searched the police PRIME database for outstanding warrants for arrest. She saw the name of an individual with whom she had had prior contact on what she estimated to be 20 to 40 occasions whether at his residence or at and other places in It is obvious that was a problem for police and well known to Const. . When she saw his name in the database and an outstanding warrant for his arrest, she contacted dispatch and advised them she was going to go to the residence to try to execute the warrant for arrest.

[8] Const. met two other officers, Constables and at the apartment building. The officers entered the building and approached the door of Suite . The suite was situated in a corner at the end of a long hall. The officers lined up in the hall adjacent to the door to the suite with Const. to the left of the door, and Consts. and behind her in that order.

[9] Const. testified that she could see that the door to the apartment was ajar about an inch or a "smidge". She said the television was on and extremely loud. She heard several voices in the suite and some yelling by a person whose voice she thought she recognized.

[10] Const. knocked at the door. No one came to the door. She knocked again and more loudly on each successive occasions. No one came to the door. She testified that she pushed the open door further open with a simple pushing motion using two fingers of her right hand. She was surprised to see an individual, later identified as standing some four or five feet from the door. She described her reaction in the following terms:

> My intention at that point was just to call out because it was so loud and I had been to the residence so many times that I knew grandma [the complainant] and, well,

> I'll say grandpa would be in the living room, so my intention was to call out to them at that point because it was very loud. And as he came towards the door he surprised me. I said, Police, do you mind if we come in, and he didn't say anything. He just looked at me and then he turned and he started walking down the hallway, and in that split second I made that decision, and regrettably, to enter the suite.

[11] Inside the suite, told Const. was not there. She concluded that was obstructing her. She placed him in handcuffs, thereby effecting a warrantless arrest. The handcuffs were later removed and no charges were laid against

[12] The other officers located in a bedroom. He was arrested. Const. testified that she saw preparing to spit at Constable . She placed her open hand under his chin knocking him backwards. She testified that she told Mr. "don't you dare, don't even go there." Const. says that at a point in time during the incident she told to "stop acting like a little retard."

[13] Ms. complained about the officers' conduct in entering the apartment without consent or a warrant, searching for in the apartment, and arresting and then releasing , and about the manner in which the officers spoke to and treated . The actions of the police inside the apartment have been the subject of other discipline proceedings, the investigation of which gave rise to the allegation of deceit with which I am concerned.

[14] Staff Sergeant of the 's Professional Standards Unit was assigned to investigate the complaint. At the conclusion of a lengthy and thorough investigation, the officer determined that the following disciplinary defaults could be substantiated:

1. That Const. Constable and Constable unlawfully entered the residence of thereby violating her rights under section 8 of the *Charter of Rights and Freedoms*, contrary to s. 77(3)(h) of the Police Act and as such conducted themselves in a manner that they knew, or ought to have known, would likely bring discredit to the (formally [sic] s. 5(a)(ii) of the Code of Conduct Regulations).

2. That Const. knowingly made a false or misleading statement concerning her entry in the residence, contrary to s. 77(3)(f)(i)(A) of the Police Act (formally [sic] s. 7(a) of the Code of Conduct Regulations).

3. That Constable intentionally or recklessly arrested without good and sufficient cause, contrary to s. 77(3)(a)(i) of the Police Act (formally [sic] s. 10(a) of the Code of Conduct Regulations).

4. That Constable in the performance or purported performance of her duties, intentionally or recklessly used excessive force in the arrest of contrary to s. 77(3)(a)(ii)(A) of the Police Act (formally [sic] s. 10(b) of the Code of Conduct Regulations).

[15] The second alleged default arose from the fact that in investigative interviews on June 15 and December 2, 2009, Const. steadfastly asserted that she had found the door to the suite open or ajar. Staff Sergeant concluded, as a result of his investigation, that the door was closed when Const. approached it, that she had opened the door in order to enter the apartment, and that her statements to the contrary were deceitful.

[16] Chief Constable reviewed the final investigation report compiled by Staff Sergeant and concluded that defaults 1, 3, and 4 had been established. Const. has been disciplined for those defaults. The Chief concluded that the default of deceit had not been established on the evidence. The Police Complaint Commissioner determined that the decision was incorrect and assigned the matter to me for review. I concluded that the default of deceit might be capable of substantiation and, as a result, became the disciplinary authority in relation to that default. As was her right, Const. chose to submit the question of whether she made a false or misleading statement or statements to a formal discipline proceeding.

[17] The issue before me on this discipline hearing is whether the door was ajar or closed when Const. approached it, and if closed, whether the statement that it was open was intentionally or recklessly false or misleading.

The Standard of Proof

[18] Counsel on behalf of Const. urged me to conclude that the standard of proof required in a discipline proceeding under the *Police Act* is higher than proof on the balance of probabilities, but less than proof beyond a reasonable doubt. Counsel submitted that an intermediate standard of proof on "clear, convincing, and cogent

evidence" should apply. Counsel for the Commissioner submitted that the law in Canada is settled and that in a discipline proceeding such as this, the applicable standard is proof on a balance of probabilities.

[19] The argument advanced by counsel in support of an intermediate standard may be summarized as follows.

[20] A discipline proceeding under the *Police Act* is not a criminal proceeding. The standard of proof beyond a reasonable doubt does not apply. Counsel observed that while the *Act* in its present form is silent on the question of the applicable burden, up to 1998 the *legislated* standard was proof beyond a reasonable doubt.

[21] The view that proof on the balance of probabilities is required in a police discipline proceeding in British Columbia has been derived, incorrectly, from the decision of Supreme Court of Canada in *F.H. v. McDougall*, 2002 SCC 53. The conclusion is not warranted because *McDougall* considered the question of standard of proof in the context of what was clearly civil litigation. A discipline proceeding under the *Police Act* is an administrative proceeding that should not be viewed as civil litigation in the conventional sense of the word, nor equated to civil litigation. *McDougall* does not stand for the proposition that proof on a balance of probabilities applies to all proceedings that are not a criminal in nature. To the contrary *McDougall* provides support for the view that an intermediate standard should apply to a proceeding that cannot be characterized as criminal or civil litigation but rather one that is governed by statute and supervised by an officer of the legislature, and that may result in the imposition of a penalty. The standard is or should be proof that is clear and convincing and based upon cogent evidence.

[22] In support of his submission that an intermediate standard should apply, counsel relies on the decisions of *Jory v. College of Physicians and Surgeons of British Columbia*, [1985] B.C.J. No. 320 (S.C); and *Bajwa v. British Columbia Veterinary Medical Association*, 2010 BCSC 848, both of which applied the intermediate standard to discipline proceedings under statute.

[23] In response to the argument, discipline counsel says that the proceeding is civil in nature because it is an administrative discipline hearing that, at its core, engages the interests of employee and employer, and not penal principles. Counsel cites the following authorities that have applied the standard of proof endorsed by the Supreme Court of Canada:

> *Osif v. College of Physicians and Surgeons*, 2009 NSCA 28, in which the Nova Scotia Court of Appeal accepted the view of a disciplinary hearing committee that allegations against a physician were to be proved on a balance of probabilities, the proof of which had to be clear and convincing and based on cogent evidence.
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> *Fitzpatrick v. Alberta College of Physical Therapists*, 2012 ABCA 207 in which the discipline committee and the College Council relied on the standard articulated in *McDougall*. In response to the appellant's claim that a higher standard applied in disciplinary cases, the Alberta Court of Appeal concluded that nothing in *McDougall* indicated an intention to overturn the prevailing law with respect to disciplinary proceedings. The court referenced the decision of *Moll v. College of Alberta Psychologists*, 2011 ABCA 110 at para. 22 where the court stated "there is no 'clear, convincing and cogent' standard, whatever the floating standard might have meant."
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> *Law Society of Upper Canada v. Mundalai*, 2012 ONSC 2661, in which the Divisional Court held that *McDougall* rejected the concept of a sliding scale of proof and that there was but one standard, namely proof on the balance of probabilities, "recognizing that the triers of fact should look for clear, compelling and cogent evidence to get the trier or triers to that threshold."

[24] There are conflicting decisions in the Supreme Court of British Columbia regarding the applicable standard in administrative or discipline cases. In *Kaminski v. Association of Professional Engineers*, 2010 BCSC 468, the court applied *McDougall* and rejected the member's claim that a higher standard of proof applied. In the same year in the case of *Bajwa v. British Columbia Veterinary Medical Association*, 2010 BCSC 848, the court stated that "the standard of proof in professional discipline cases remains intermediate". *Bajwa* was reversed on appeal without comment on the applicable standard of proof. Counsel says the apparent contradiction between *Kaminski* and *Bajwa* may be explained by the fact that in *Bajwa* counsel agreed on the standard to be applied without addressing the point or citing *McDougall*.

[25] While the authorities from the Ontario Divisonal Court and the courts of appeal in other provinces are not binding in British Columbia, the judgments are worthy of respect

and commend themselves to me. Until such time as the British Columbia Court of Appeal determines otherwise, I am of the view that the standard to be applied in a *Police Act* discipline proceeding is that of proof on the balance of probabilities, in the assessment of which the trier of fact must examine the quality of the evidence with care to ensure that it is clear, convincing, and cogent. As I see it, the words "clear", "convincing" and "cogent" constitute an admonition to the trier of fact to assess the evidence with care and to ensure that it is clear and not ambiguous. Evidence that is convincing is also cogent. The words are synonymous. The assessment of evidence in this manner is something one would expect of a trier of fact in any event.

Review of the Evidence and Assessment of Credibility

[26] The *Police Act* directs that the final investigation report and the evidence and records referenced in it is to be considered at a discipline proceeding. Persons to whom notice has been given may testify. The officer whose conduct is the subject of the proceeding is not compellable, but may testify should she wish to do so.

[27] The only evidence pointing to the fact that the door to Suite was open is that of Const. in her statements during the investigation and at the discipline hearing. Her evidence is summed up in her words: "I absolutely did not open that door."

[28] Throughout the investigation and in her testimony Const. remained steadfast in her assertion that the door was ajar about an inch when she approached it and that it opened slightly more as she knocked more forcefully on successive occasions. She testified that she was able to open the door using a gentle push with two fingers of her right hand.

[29] At the time Const. was first interviewed by Staff Sgt. on June 15, 2009, the sole issues under consideration were whether the officers had lawfully entered the apartment, and whether they had acted appropriately once inside. In that interview Const. described the scene she found as follows:

> "...I was the first member to approach the door. A it, it's on a dead end area so the concern is that you there's kind of a fatal funnel with no kind of escape route from there.

> So we kind of approached um from the hall side so it was myself first. I believe Cst. and then a, Cst. . I knocked um at the door you could see the dar (phonetic) door was open ajar it wasn't fully open. Just a smidge open knocked at the door knocked at the door you could hear all kinds of voices inside a, quite loud. TV was loud knock, knock, knock no answer a, so I just gave it a little tap open and um a young male came towards the door." And "We knock, knock, knock, knock, knock, knock, knock and it so every time I knocked it opened more. So it another couple inches open. And called out it was so loud in the suite." [sic]

[30] In response to a question asked by Staff Sgt. about her lawful authority to enter the apartment Const. replied "consent". When asked how she received this consent, Const. replied "I asked for permission to enter and at no time did someone say to me we weren't welcome in there." She later stated that if the door had been closed, she would not have entered the suite.

[31] Const. was interviewed again on December 2, 2009, by which time the conduct of the officers at the scene was the subject of a criminal investigation into an allegation of assault. Staff Sgt. had not yet framed an allegation of deceit. In the interview, Const. reiterated her statement that the door was open and stated that she knew that if the door were closed she had no authority to enter.

[32] On July 21, 2009, Staff Sgt. had examined the door to suite He observed that the door to the suite was heavier than other interior doors and was fitted with a self-closing hinge located on the top portion of the door; the door's handle was a cylindrical knob that appeared to be functioning properly; the door could not be propped open without using either the deadbolt or wedging an object between the door and door jamb; the door would not stay ajar even after lightly closing it; the top hinge always forced the door closed; and the door could not be opened by knocking. He observed a grey-coloured doorstop inside the suite behind the door that could be wedged between the door and the jamb.

[33] In the second part of the interview, on December 2, 2009, Const. agreed to re-enact the entry as it was made on March 23, 2009.

[34] The door to the suite was closed when Const. and Staff Sgt. approached it. She was unable to place the door in the position she had found it. On

each of two attempts, the door closed and latched. She did not know whether the deadbolt was extended on March 23, 2009, but thought that unlikely as the door as she said he found it was closed more than was the case when the deadbolt was extended. She did not think a doorstop had been used to keep the door ajar. She was unable to increase the opening and have the door remain open by knocking. When pushing the door with her fingers as she had described in her June statement, she was required to use her foot to keep the door open.

[35] The result of the re-enactment was that Const. was unable to replicate the state of the door as she said she had found it on March 23, 2009. The result was inevitable because the self-closing hinge was operational on December 2, 2009. The answer to the question whether the door responded in a similar manner on March 23, 2009 depends upon the operational state of the door hinge on that occasion.

[36] Const. wrote the following in her notes of the incident:

> Members knocked several times but could hear movement inside the suite, door insecure. Cst. announced and attend the door. Members asked to enter. advised not in the suite approx. 6-7 time, bedrooms searched. [sic]

[37] Const. was cross-examined on her use of the word "insecure" to describe the door. She replied "it's my interpretation of how I wrote my notes was that the door was insecure, meaning it wasn't closed." [sic] The following examination then ensued:

> Q Okay, I understand. You told us what you mean by your notes and I'm not quibbling with that right now. You agree that insecure can mean different things?
>
> A I think it's open to interpretation.
>
> Q Right. As opposed to ajar, which is a word you later used. We all know what that means; right?
>
> A Yes.
>
> Q Partly open; correct?
>
> A That's correct.
>
> Q It can't mean closed but unlocked, ajar cannot mean that, can it?
>
> A No, it wouldn't.

> Q Right. And "ajar" was the first word you used to describe the state of this door in the June 15 statement to Staff Sgt. ; correct?
>
> A Yes, because, like I said, using the terminology "door insecure," like, you're saying is that it can mean a lot of different things to people.
>
> Q Right.
>
> A So by using the word "ajar" I could paint the picture a lot more clearer for Sgt. , but to me it's the same terminology – meaning of "insecure."
>
> Q But you chose to use a different word in the notebook, as we see there; correct?
>
> A That's correct.

[38] In the course of her examination and cross-examination, Const. denied touching the knob at all. She testified that she saw nothing that might have kept the door open or ajar. When asked whether it was *possible* that the door was closed, Const. said it was not.

[39] Staff Sgt. obtained other evidence with respect to the state of the door when police were at the scene on March 23, 2009.

[40] Staff Sgt. interviewed Const. on July 8, 2009. On the night of the incident Const. was working his third shift in uniform, having just completed Block 1 Police Academy Training. He stated that Const. knocked three times and that following a second set of knocks:

> [Const. Bowyer] tried the door and it was unlocked and she swung it open and there was a male standing by the door.... I believe the handle was a round-shaped handle and she just twisted it, it was unlocked and the she just, say and I think she was checking to see if there was a chain on it or anything but she just kind of gave it a light push.

[41] Const. Phillips described being de-briefed by Const. Bowyer after the incident in the following terms:

> [Const.] actually pulled me aside and she just said listen, I, what happened here is nothing to do with you two. I just wanted, and by you two I mean Constable and Constable , I just wanted to a, I'm sick of dealing with and I wanted to get this arrest over with and a, whatever I did just forget it. She's like and she said don't use it as a learning experience for your block two.

[42] Staff Sgt. interviewed Const. on June 10, 2009. He said that he had turned his head to speak into his radio in order to update other officers outside the apartment building. When he turned again toward the door it was in the process of opening. He stated that he did not see who, if anyone, had opened the door. That remained his evidence at the discipline proceeding.

[43] Consts. and were both examined on the incident report that appeared in police records. The report provided as follows:

> On 2009-03-23 at approx. 2240 hours Cst , Cst and Cst attended the residence of in for an arrest attempt of (DOB:1992-11-24) on an outstanding warrant. Officers were let into the building by a resident (unknown) of the complex. Officers could hear people talking as they approached the apartment door. Several door knocks were conducted without answer. Officers could hear foot-steps coming from the other side of the suite's door. The door handle was tried and found to be unlocked. The door was opened and police announced themselves several times to occupants within the suite. No answer. Eventually (10-15 seconds later) a male, later identified as ., [sic] stepped out of the room closest to the entrance. Police then asked if they could enter the suite. did not give a response. Police entered the suite at which time stated that he did not know where was....

[44] Neither officer could say whether the entry was written by one of them alone and if so by whom, or whether it was a joint effort. I find that the entry was more likely than not the product of a joint effort given that Const. was very new to the actual on-duty work of a police officer and Const. was his mentor on that shift.

[45] The report conforms to the statement made by Const. to Staff Sgt. and substantially conforms to the officer's evidence at the hearing. While Const. was uncertain from time to time about where he was standing in relation to Const. and Const. when in the hall, he resolved the uncertainty and confirmed that he was standing next to Const. . There can be little doubt that was the case given the evidence of the three officers.

[46] At the discipline proceeding Const. initially testified that he believed Const. put her hand on the door handle. When asked to refresh his memory from his interview with Staff Sgt. Const. reiterated that he saw Const. place her hand on the knob, but he did not see her twist the knob although he

believed she did so. The belief was entirely reasonable if the door was in fact closed. I accept the constable's evidence that Const. placed her hand on the knob. If the door was closed, the irresistible inference is that Const. turned it in order to open the door.

[47] At the discipline proceeding, Ms. testified that she had come from her apartment, Suite , that night to put her granddaughter, who was and 's 10-year old sister, to bed. She testified that it was common for the families to go back and forth between Suites and . Ms. testified that the door was always allowed to close except when it was held open by a doorstop in order to allow garbage or laundry to be taken in or out of the suite. She testified that the door was closed when she went into the apartment that night and she had not engaged the deadbolt behind her. There is nothing in her evidence whether on examination in chief or cross-examination to suggest that the self-closing hinge was not working on March 23, 2009.

[48] When interviewed on May 28, 2009, said he did not open the door. He was interviewed again on September 3, 2009. On that occasion, he stated that the door had not been replaced, worked on or adjusted since March, it had always been as it was on September 3, 2009, and "there's nothing wrong with that door." It had not been touched or worked on by the management company or by any of the family. He said the door was closed when police arrived on March 23, 2009.

[49] testified that to his recollection the door was closed on the night of March 23, 2009, it was sometimes kept open with a doorstop, but there was no need to use the doorstop on the night in question. The evidence that the doorstop was not in use that night is consistent with Const. 's evidence that she did not see any doorstop or other restraining device that could have kept the door from closing.

[50] In a second interview on September 3, 2009, stated that as long as he could recall the door had not been replaced or worked on at all, he had not made any adjustments to the door, and he did not have any knowledge of someone else performing any work on the door. At the hearing, testified that the door was closed on March 23, confirmed that the door is a self-closing door, and said that on March 23 when

police arrived it was not propped open by a doorstop or by a rope hanging from the ceiling that was used to turn a hall light on and off.

[51] Staff Sgt. contacted the property manager who advised that while records were kept of most maintenance work performed and it was customary to create a record when a resident makes a request for maintenance, there were no records of any apartment doors being replaced or worked on in the period following March 23, 2009.

[52] Mr. , who joined the property management company in July 2009, testified that the door to the suite was a wood frame, fire-rated, self-closing door in order to satisfy building and fire codes, and was the standard type of door and closing mechanism used in the apartment building. He testified that he could find no record of any repair to the door but said that the record-keeping practices in relation to this apartment building were poor to average. That being the case, I do not draw any inference from the absence of a record requesting a repair to the door to Suite .

Findings of Fact and Conclusion

[53] I find it highly improbable that the self-closing mechanism attached to the door was not operational on March 23. I accept the evidence of and regarding the state of the door and the closing mechanism on March 23. I also accept the evidence of Const. that he saw Const. place her hand on the knob, an observation that directly contradicts the evidence of Const. There is no reason why Const. would make the statement he did, testify in the manner he did, or write or participate in the writing of the police record in which the door was described as unlocked, unless, from his participation in the incident and his observation, he knew that to be the case. None of the evidence, objective or subjective, aligns with the statement of Const. regarding the state of the door. The inference to be drawn from the note she made at the time was that the door was "insecure" because it was unlocked, but not open. It is apparent from her evidence that she knew the difference between an insecure door and one that was open or ajar.

[54] I am also mindful that Const. both stated to Staff Sgt. and testified in the proceeding that officers had visited Suite on many prior occasions in response to calls and most often, if not always, no one inside the suite came to the door in response to knocking. Her evidence was that it was common practice for officers to open the door and to enter the suite without invitation. While the officer testified that her statement meant nothing more than that officers would enter without warrant in exigent circumstances as permitted by the *Criminal Code*, there was no indication that on any prior occasion she or other officers found the door to the suite open or ajar. In fact, the opposite inference is warranted by her evidence in this regard: officers always found the door closed which is what one would expect given the code requirement that a door be affixed with a self-closing hinge.

[55] All of the evidence, whether subjective or objective, including the code requirement for a fire-rated, self-closing door; the evidence of Const. that he saw Const. place her right hand on the knob; the evidence of that the door was closed on the night in question; and the evidence of that the door closed when she went to the apartment on the evening of March 23 to put to bed; is sufficiently clear, convincing and cogent to warrant my finding that that the door was closed when police approached it on March 23, 2009.

[56] I find that the statements made by Const. in the course of the investigation into her conduct on March 23, 2009, with respect to the state of the door were not the result of mistaken observation, nor were they unintentional. On all of the evidence I must and do conclude that the officer intended to assert, without acknowledging any possibility that she might have been in error, that the door was ajar in order to attempt to justify her entry in the face of an investigation into a complaint that she had unlawfully entered the premises. As the officer acknowledged, opening a closed door without a warrant to search was unlawful in the circumstances that prevailed on the evening of March 23, 2009.

[57] For the foregoing reasons, I find that the allegation of deceit has been substantiated or proved.

order to attempt to justify her entry in the face of an investigation into a complaint that she had unlawfully entered the premises. As the officer acknowledged, opening a closed door without a warrant to search was unlawful in the circumstances that prevailed on the evening of March 23, 2009.

[57] For the foregoing reasons, I find that the allegation of deceit has been substantiated or proved.

[58] Pursuant to s. 125(1)(c) of the Police Act, I invite the parties to make submissions as to the appropriate disciplinary or corrective measures in relation to the allegation that has been proved. While the *Act* appears to contemplate written submissions within 10 days, I am not averse to convening with counsel, Const. Bowyer, and the complainant at a time to be arranged with the registrar for that purpose.

DATED at Vancouver, British Columbia, the 27th day of November 2012.

Ian H. Pitfield
Discipline Authority