

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

AND

IN THE MATTER OF CONSTABLE

DECISION ON DISCIPLINE PROCEEDING

PART II

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

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[1] In reasons dated November 22, 2012, I stated my conclusion that Constable , a member of the , had committed the disciplinary default of deceit on June 15 and December 2, 2009, when making statements to Staff Sergeant in the course of an investigation into a complaint surrounding her entry into a residence at in on the night of March 23, 2009. The parties appeared before me on December 18, 2012, to make submissions with respect to the appropriate sanction.

[2] These defaults were governed by the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98 (the "*Regulation*"), section 19 of which provided as follows:

19(1) After finding that a disciplinary default has occurred, the discipline authority may impose one or more of the following disciplinary or corrective measures in relation to the police officer concerned:

(a) dismissal;

- (b) reduction in rank;
- (c) transfer or reassignment;
- (d) suspension without pay for not more than 5 scheduled working days;
- (e) direction to work under close supervision;
- (f) direction to undertake special training or retraining;
- (g) direction to undertake professional counselling;
- (h) written reprimand;
- (i) verbal reprimand.

(2) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, the discipline authority must choose the least onerous disciplinary or corrective measures in relation to the police officer concerned unless one or both of the following would be undermined:

- (a) organizational effectiveness of the municipal police department with which the police officer is employed;
- (b) public confidence in the administration of police discipline.

(4) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures for a breach of this Code by a police officer of a municipal police department, including, without limitation,

- (a) the seriousness of the breach,
- (b) the police officer's record of employment as a police officer, including, without limitation, his or her service record of discipline, if any, and any other current record concerning past discipline defaults,
- (c) the impact of proposed disciplinary and corrective measures on the police officer and on the police officer's career and family,
- (d) the likelihood of future breaches of this Code by the police officer,
- (e) whether the police officer accepts responsibility for the breach and is willing to take steps to prevent a recurrence of the breach,

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

(g) the range of disciplinary or corrective measures imposed in similar circumstances, if known, and

(h) other aggravating or mitigating factors.

(5) Nothing in this Code prevents a chief constable or a municipal police board from doing one or both of the following:

(a) issuing an apology on behalf of the municipal police department concerned or, with the consent of the police officer concerned, on behalf of both the department and the police officer;

(b) considering, proposing or implementing policy changes designed to prevent recurrence of a breach of this Code.

[3] Discipline counsel submitted that the appropriate sanction was suspension without pay for three to five days. The latter is the maximum permitted by the *Regulation*. The *Police Act*, in its current form, permits suspension without pay for 30 days. Counsel submitted that the suspension should be consecutive to three concurrent, two-day suspensions imposed by the Chief Constable of the [redacted] in respect of other disciplinary defaults committed by Const. [redacted] in the course of entry to the residence and her conduct therein. Counsel also submitted that Const. [redacted] should be required to provide a written apology to the complainant.

[4] Counsel for Const. [redacted] submitted that a suspension of two to three days was appropriate because the deceit related to a very finite issue in the context of the entire course of conduct, namely whether the door to the apartment was open or closed before Const. [redacted] entered the suite. Counsel noted that Const. [redacted] had accepted responsibility for other misconduct as determined by the Chief and she accepted the seriousness of the default of deceit. Counsel did not dispute the assertion that the suspension should be consecutive to that imposed by the Chief of Police. Counsel opposed the suggestion that the officer provide a written apology.

[5] The principal aggravating factor in this instance is the seriousness of the default. In addition, notwithstanding the evidence and my conclusion, the officer does not accept

responsibility for the default. She continues to decline to acknowledge that she opened the door in order to enter the premises in non-exigent circumstances without a warrant, an action that she agrees would have been unlawful. Throughout the investigation and this proceeding, Const. [REDACTED] has also declined to acknowledge that she might have been mistaken about the state of the door.

[6] The mitigating factors are the officer's record of employment that is free from default, criticism, or reprimand, and the likelihood that the officer will benefit from this proceeding and refrain from committing defaults in the future. Fellow officers have commended Const. [REDACTED] for dedication to her work and her competence. One or more superiors have recommended her for promotion in the rank of constable. Counsel for Const. [REDACTED] also submitted that the protracted period of time from the date of the default in March 2009 to the date of disposition in 2012 should be considered a mitigating factor.

[7] I do not propose to recount the history of the investigation and the discipline proceeding. While dispatch is to be encouraged in the investigation and prosecution of disciplinary defaults, I will note that in this case a considerable degree of care was required and taken by the investigating officer and others in relation to a very serious allegation that arose out of an investigation into other misconduct of which a citizen had complained. In addition, deficiencies in the *Police Act* resulted in two applications to the Supreme Court of British Columbia: one by Const. [REDACTED] and one by the Police Complaint Commissioner. The proceedings delayed the conduct and completion of the process. I cannot conclude that any aspect of the course of proceedings should enter into the determination of the appropriate sanction.

[8] In my opinion, the only forms of penalty or sanction that could apply in this case are dismissal, reduction in rank, transfer or reassignment, and suspension without pay. The latter is the least severe of the sanctions. I can find no authority in the *Regulation* for an order that Const. [REDACTED] provide a written apology to the complainant and reject discipline counsel's submission to the contrary.

[9] The seriousness of the breach from the [redacted]'s perspective is obvious and has been reflected in the fact that Const. [redacted] was assigned from active patrol duty to administrative duties for much of the time that the inquiry into her conduct has been under way. In my opinion, deceit practised by an officer in the course of employment, particularly where the deceit arises in the course of a review of an officer's conduct by a senior officer, is something that cannot be trivialized or lightly dismissed. A police service must have confidence that its officers will be truthful and forthright when reporting to superiors and when recounting the nature of their conduct. To say or expect anything less undermines the relationship of employer and employee at a most basic level, and is of particular concern where the deceit pertains to an officer's conduct toward one or more citizens. Minimizing the nature and consequences of deceit pertaining to conduct involving the person or property of a member of the public would adversely affect and tend to undermine public confidence in the integrity of police services on which citizens place so much reliance.

[10] I am mindful of the fact that the maximum period of suspension authorized by the *Regulation* is five days. One may argue that a single set of facts or circumstances gave rise to multiple defaults so that, in aggregate, the suspension resulting from that incident should not exceed five days regardless of the number of different defaults that arise from the conduct: cf. *Kienapple v. R.*, [1975] 1 SCR 729. In this case, the deceit arose approximately three months after the unlawful entry into the residence, and was repeated approximately nine months post-incident. In my opinion, the default of deceit must be considered separately from the defaults that were found to have been committed on March 23, 2009.

[11] In all of the circumstances, I consider it appropriate to impose and do impose upon Const. [redacted] a penalty of suspension without pay for five scheduled working days for the disciplinary default of deceit. The penalty shall be consecutive to the three

concurrent, two-day suspensions without pay imposed by the Chief Constable of the \_\_\_\_\_  
\_\_\_\_\_ for other defaults.

DATED at Vancouver, British Columbia, the “27<sup>th</sup>” day of December 2012.

“Ian H. Pitfield”

Ian H. Pitfield  
Discipline Authority