

**BRITISH COLUMBIA**  
**CANADA**  
**(BEFORE THE HONOURABLE PETER J. MILLWARD, QC**  
**SITTING AS ADJUDICATOR)**

Vancouver, B.C.  
File: PH99-01

PUBLIC HEARING  
Pursuant to the *Police Act*, Section 60(6), 60.1(3)

**IN THE MATTER OF THE PUBLIC HEARING**  
**INTO THE COMPLAINT AGAINST: CONSTABLE M. SEKELA;**  
**CONSTABLE K. HARDER; CONSTABLE C. THOMSON;**  
**CONSTABLE D. MITCHELL, AND CONSTABLE D. SCHMIRLER OF THE**  
**ABBOTSFORD POLICE DEPARTMENT**

July 10, 2000

**Oral Reasons**

THE ADJUDICATOR: It is not within my mandate, as I see it, to send a message to other Emergency Response Teams by the imposition of penalties to individual members of the Abbotsford Police Department. I would hope, and indeed I have some confidence, that the disposition of this matter, if it's done reasonably and effectively, will convey a message to the other persons in the same field. But that is not my intention in making these remarks.

I was disturbed this morning to learn that there have been intimations in the news media to the effect that one or more of the respondent officers involved in this proceeding have been participants in dishonest or unethical dealings. That is the information that I understood to have been conveyed this morning. If any such allegations have been made, then I wish to make it clear that there has been no evidence in this hearing to suggest any dishonest, malicious, or sinister motivation on the part of the respondent officers. Their difficulties arose through an excess of zeal and the failure to exercise mature judgment.

Matthew Sekela was found guilty on two counts. For the purpose of disposition, I would prefer to look at those two counts as forming parts of the same complaint. I

found that Officer Sekela acted without requiring sufficient information and without exercising the judgment expected of a person in command of a tactical team of the Abbotsford Police Force.

Officer Sekela is highly trained and skilled in his profession. In my view, the benefits of those skills should not be lost to the public by my foreclosing his career. On the other hand, he should not be in a position to commit a tactical team to act in such a way as to abuse or endanger the very citizens the police are intended to protect.

I conclude that Officer Sekela should be suspended for five days without pay, and that that together with the fact of his conviction and the attendant publicity should be the end of the punishment aspect of this proceeding.

I also conclude that he should be permitted to continue to discharge his duties as a police officer. But with respect to the position taken by Mr. Harris, I direct that he be assigned duty apart from membership in the Emergency Response Team and that he be directed to undergo special training designed to enable him to make more appropriate decisions and better evaluate intelligence information with respect to effecting entry pursuant to a search warrant or otherwise directing tactical teams.

I recognize that there are a number of difficulties inherent in that direction. I'm not in a position to make specific recommendations as to the remedying of those difficulties.

I further direct that after the completion of such training and the expiration of one year from this date Officer Sekela will be at liberty to reapply for membership in an Emergency Response Team.

There will be no additional penalty with respect to the second count.

I have found David Schmirler discharged his firearm without reasonable grounds and when it was unsafe to do so. Like Officer Sekela, Constable Schmirler is a highly trained and dedicated officer and has demonstrated qualities of leadership. Unfortunately his training has emphasized rapid response and the immediate application of force in the face of perceived danger, without the concomitant consideration of the interests of the public and without weighing the possibility of what some may euphemistically refer to as "collateral damage."

Accordingly, Officer Schmirler should be suspended from his position as a member of the Emergency Response Team and considered qualified to be restored to that duty only when he has shown the maturity and judgment necessary to discharge that function while avoiding repetition of that dangerous conduct.

I direct that he be reassigned and directed to undertake special training as to the exercise of judgment in circumstances where the discharge of a firearm may be called for, and that he not be considered for reappointment to the Emergency Response Team for one year.

While the foregoing disposition may appear somewhat arbitrary in the imposition of the time limit, the question of qualification or requalification of these officers and the determination of the point at which they demonstrate the desired level of maturity and good judgment is difficult.

Reading the report of the internal review and the report of the external investigation does not inspire confidence in the proposition that the superior officers in the Abbotsford Police Department hierarchy are in a position to reach an objective decision in that regard. It is for that reason that I have imposed the apparently arbitrary condition that neither officer be considered eligible for reappointment to an Emergency Response Team before the expiration of one year.