

HEARING 2017-01
**IN THE MATTER OF THE POLICE ACT,
R.S.B.C. 1996,
C. 367 AS AMENDED
AND IN THE MATTER OF A POLICE ACT PUBLIC HEARING
INTO ALLEGATIONS AGAINST CONSTABLE BRIAN HOBBS,
VANCOUVER POLICE**

BEFORE: Adjudicator Brian M. Neal QC (rt)

PUBLIC HEARING COUNSEL: B. HICKFORD
COMMISSION COUNSEL: G. DELBIGIO, Q.C.
COUNSEL FOR CONSTABLE HOBBS: M.K. WOODALL

**SUPPLEMENTARY SUBMISSIONS OF COMMISSION COUNSEL ON DISCIPLINE
and USE OF THE SERVICE RECORD OF CONSTABLE HOBBS**

1. Commission Counsel submits that Service Record of Discipline of Constable Hobbs (the Record) must be considered by the adjudicator in this case.
2. For ease of reference, s.126 of the Act, which determines this result, is set out below:

Imposition of disciplinary or corrective measures in relation to members

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under [section 113](#) [*complainant's right to make submissions*], the discipline authority must, subject to this section and sections 141 (10) [*review on the record*] and 143 (9) [*public hearing*], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;

- (d)transfer or reassign the member within the municipal police department;
- (e)require the member to work under close supervision;
- (f)require the member to undertake specified training or retraining;
- (g)require the member to undertake specified counselling or treatment;
- (h)require the member to participate in a specified program or activity;
- (i)reprimand the member in writing;
- (j)reprimand the member verbally;
- (k)give the member advice as to her or his conduct.

(2)Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a)the seriousness of the misconduct,
- (b)the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- (c)the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- (d)the likelihood of future misconduct by the member,
- (e)whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- (f)the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
- (g)the range of disciplinary or corrective measures taken in similar circumstances, and
- (h)other aggravating or mitigating factors.

(3)If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

3. Subsection 2 provides that “aggravating and mitigating circumstances must be considered” by an adjudicator in determining what is a “just and appropriate” “disciplinary or corrective measure”.
4. Subsections (2)(a)-(h) are a non-exhaustive list of circumstances that must be considered by an adjudicator in determining what is “just and appropriate”.
5. The phrase “without limitation” makes it clear that (a)-(h) is not an exhaustive list of considerations.
6. On this basis, s.126(2) mandates that an adjudicator consider aggravating and mitigating circumstances and gives an adjudicator a discretion to consider factors, in addition to those specified in (a)-(h), as long as they constitute an aggravating or mitigating factor in the circumstance of the particular case.
7. Subsection 2(b) specifically requires the adjudicator to consider the Record.
8. In addition, the Record is relevant to subsection 2(c) because “the impact of proposed disciplinary or corrective measures” on Constable Hobbs and, or his family and career may in part, be dictated by the Record.
9. Finally, the Record is relevant to subsection 2(d), which is that an adjudicator must consider “the likelihood of future misconduct” Constable Hobbs.
10. It is submitted that an inference is available that, because a member has an existing record, that there is a “likelihood of future misconduct” that the adjudicator must then consider as an aggravating circumstance which must, in turn be considered in determining what is a “just and appropriate disciplinary or corrective measure”.

11. Therefore, on the basis of the statutory language, the Record must be considered by the adjudicator. However, if this is not correct, then because (a)-(h) is a non-exhaustive list, then the Record must also be considered on the basis that it is an aggravating factor in the circumstances of this case.

All of Which is Respectfully Submitted

Dated at Vancouver this 19th day of July 2018

Greg DelBigio, QC