



Office of the
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2017-13291
April 18, 2018

NOTICE OF REVIEW ON THE RECORD

Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation against Special
Municipal Constable (SMC) Leanne Keith of the New Westminister Police Department**

To: SMC Leanne Keith (#195) (Member)
c/o New Westminister Police Department
Professional Standards Section

And to: Superintendent Marcie Flamand (External Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

And to: Chief Constable Dave Jones
c/o New Westminister Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On March 29, 2017, the Office of the Police Complaint Commissioner (OPCC) received information from the New Westminister Police Department in relation to an incident which occurred on March 24, 2017. According to the New Westminister Police Department, on March 24, 2017, Constable Fildes of the Lower Mainland District Integrated Road Safety Unit (LMD IRSU) was conducting a checkstop on United Boulevard near Fawcett Road in Coquitlam, BC. At approximately 2351 hours, a white Volkswagen Jetta entered the checkstop but did not stop until flagged down by Constable Fildes. The driver of the Volkswagen Jetta, later identified as off duty Special Municipal Constable (SMC) Leanne Keith, advised that she had consumed one glass of wine an hour prior to the stop. SMC Keith was read the Approved Screening Device (ASD) Demand. She subsequently provided a breath sample that registered a fail.

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2. SMC Keith was detained for an impaired driving investigation and advised of her right to a second breath test. SMC Keith declined the second test. Constable Fildes issued SMC Keith with a 90 day Immediate Roadside Prohibition (IRP) and impounded her vehicle for 30 days.
3. On April 4, 2017, after reviewing the information forwarded by the New Westminster Police Department, I ordered an investigation into the conduct of SMC Leanne Keith pursuant to section 93(1) of the *Police Act*. New Westminster Police Professional Standards investigator, Sergeant Elmario Cahambing, conducted an investigation into this matter and on September 19, 2017, submitted the Final Investigation Report (FIR) to the Discipline Authority.
4. On September 26, 2017, following his review of the FIR, Chief Constable Dave Jones, as the Discipline Authority substantiated one allegation of *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act*, based on the sample of her breath that registered a fail on the Approved Screening Device (ASD). Discipline Authority Jones offered SMC Keith a prehearing conference in the matter setting out a proposed discipline of a written reprimand.
5. A prehearing conference was held on October 17, 2017, before Chief Constable Jones, as the Prehearing Conference Authority. An agreement was reached in which SMC Keith admitted the misconduct of *Discreditable Conduct* and agreed to the imposition of a written reprimand as a corrective measure.
6. On November 10, 2017, I released my decision to the parties rejecting the Prehearing Conference Agreement pursuant section 118(1) of the *Police Act*. The basis for my rejection of the Agreement was that the disciplinary and/or corrective measures proposed did not address the seriousness of the misconduct. Pursuant to section 123 of the *Police Act* the matter was then set for a discipline proceeding.
7. In light of this office having not approved of Chief Constable Jones' proposed written reprimand, I was of the view that it was in the public interest that a senior officer from another police department be designated as the Discipline Authority.
8. Therefore, pursuant to section 135(1) of the *Police Act*, in substitution, I designated Superintendent Marcie Flamand of the Vancouver Police Department to exercise the powers and perform the duties of a Discipline Authority in relation to this matter.

Discipline Proceeding and Proposed Discipline

9. On February 8, 2018, following the discipline proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determinations in relation to the allegations:
 - (i) That on March 24, 2017, Special Municipal Constable (SMC) Leanne Keith, committed the disciplinary default of *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on a Municipal Police Department. Specifically, that while off-duty, SMC

Keith operated a motor vehicle while under the influence of alcohol and received an immediate roadside prohibition.

Proposed Disciplinary Measure – Suspension without pay for one (1) scheduled working day.

10. In arriving at a 1-day suspension, Superintendent Flamand found that the penalty could have been higher had it not been for:
 - a. Full acceptance of responsibility and sincere remorse;
 - b. Cooperation with the investigation;
 - c. An unblemished employment record;
 - d. SMC Keith's driving did not result in accidents or injury; and
 - e. The nature of SMC Keith's employment is dissimilar from that of a municipal police constable or Special Municipal Constable who carries out police like duties.
11. SMC Keith was provided a copy of Superintendent Flamand's findings in relation to the allegation of misconduct and determinations on appropriate disciplinary and/or corrective measures at the discipline proceeding. SMC Keith was informed that if she was aggrieved by either the findings or determinations, she could file a written request with the Police Complaint Commissioner ("the Commissioner") to arrange a Public Hearing or Review on the Record.
12. To date, the OPCC has not received a request for Public Hearing or Review on the Record from SMC Keith.
13. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.

Decision

14. I have reviewed the record of the disciplinary decision, and the associated determinations, pursuant to section 138 of the *Police Act*, I have determined that there is not a reasonable basis to believe that the Discipline Authority's determination as to whether misconduct has been proven are incorrect pursuant to section 125(1) of the *Police Act*.
15. I am of the view, however, that the Discipline Authority's application of section 126 of the *Police Act* was incorrect. In particular, I am of the respectful view that Superintendent Flamand erred in her determination that the conduct in question was mitigated based on an

artificial distinction relating to the nature of SMC Keith's duties versus other municipal constables and Special Municipal Constables, including that she does not wear a uniform.

16. I note that by virtue of her role in swearing information's, SMC Keith plays an integral role in the initiation of criminal proceedings, including those charging persons with criminal offenses for impaired driving. However, it is my view that responsibilities as a sworn officer should not be dependent upon the duties performed. Tying responsibility to the duties performed creates artificial distinctions that are not consistent with the public expectation that sworn officers be held to a higher standard.
17. I am also of the view that cooperation with the roadside investigation or the *Police Act* investigation, both of which are required by statute, do not constitute mitigating factors.
18. Furthermore, I am of the view the Discipline Authority has not properly considered the considerable guidance provided by the Honorable Ian H. Pitfield, retired BC Supreme Court Justice regarding the minimum range for discipline/corrective measures pursuant to the *Police Act* in relation to drinking and driving incidents. Mr. Pitfield found that in the case of ASD Fail reading, the minimum disciplinary measure should not be less than a 3-day suspension and the maximum in the range of 7 to 10 days. (See: In the Matter of the *Police Act*, RSBC 1996, c367 and in the Matter of a discipline proceeding against Constable *** of the Victoria Police Department, June 1, 2016).
19. Based on a review of dispositions for drinking and driving offenses from other jurisdictions, it appears as though the range of discipline/corrective measures in British Columbia, even at the high end of the range cited by the Honorable Ian H. Pitfield, may be below the appropriate range for that conduct.
20. I have also determined that a Review on the Record is necessary in the public interest. In determining that a Review on the Record is necessary in the public interest, I have considered several relevant factors, including but not limited to the following:
 - a) The complaint is serious in nature as the allegations involve a significant breach of the public trust;
 - b) The conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints, or the disciplinary process;
 - c) The Discipline Authority's interpretation or application of this Part or any other enactment was incorrect;
 - d) The disciplinary or corrective measures proposed are inappropriate or inadequate.
21. I have determined that at this time, a Public Hearing is not necessary in this particular matter. I'm satisfied that it will not be necessary to examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Further, I'm satisfied that a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. I have determined that a Review on the Record is a more effective and efficient means of adjudicative review in these circumstances.

22. Accordingly, pursuant to section 137(2) and 141 of the *Police Act*, I am arranging a Review on the Record. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or the service record of the member.
23. Pursuant to section 141(5) of the *Police Act*, SMC Keith, or her agent, or legal counsel may make submissions concerning the matter under review.
24. Pursuant to section 141(6) of the *Police Act*, the Police Complaint Commissioner or his commission counsel may make submissions concerning the matter under review.
25. Pursuant to section 141(7) (b) of the *Police Act*, the Adjudicator may permit the Discipline Authority to make submissions concerning the matter under review.
26. It is therefore alleged that SMC Keith committed the following disciplinary default, pursuant to section 77 of the *Police Act*:
 - (i) That on March 24, 2017, SMC Keith, committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department.

THEREFORE:

27. A Review on the Record is arranged pursuant to section 137(2) and 141 of the *Police Act*.
28. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honorable Brian Neal, Q.C. Retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 18th day of April, 2018.



Stan T. Lowe
Police Complaint Commissioner

Office of the
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