RR 18-01
OPCC File 2015-11249

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

AND IN THE MATTER OF A REVIEW ON THE RECORD INTO THE ORDERED INVESTIGATION OF CONSTABLE GEOFFREY YOUNG OF THE DELTA POLICE DEPARTMENT

BEFORE: Adjudicator Carol Lazar (rt)

COMMISSION COUNSEL: Brock Martland
CONSTABLE YOUNG'S COUNSEL: Kevin Woodall

REPLY SUBMISSIONS OF COMMISSION COUNSEL ON DISCIPLINE

1. These are the reply submissions of commission counsel made in this review on the record pursuant to s. 138 of the *Police Act*, R.S.B.C. 1996, c. 367, as amended. They respond to the written submissions dated 23 September 2018 filed by Constable Geoffrey Young of the Delta Police Department (the "Member").

Straw men

2. *Merriam-Webster's Dictionary* defines "straw man" to describe "a weak or imaginary opposition (such as an argument or adversary) set up only to be easily confuted".

3. The Member's 49-page written submission is full of straw men and arguments that overstate a point in order to support a proposition.

4. First, the Member portrays the Police Complaint Commissioner as a villain who stands alone. He is said to be unenlightened, retrograde, and out of step with a progressive approach to drug use that is shared by all sectors of Canadian society.

This, of course, is simplistic and reductionist. And it is wrong. The Commissioner is aware of the grave effects of addiction to opioids and other drugs. He is not setting out to punish the addiction or discourage those with addictions from coming forward. The key here — a fact that the Member spends glancingly little time addressing — is that the Member deliberately misled the police in the course of a criminal investigation. He did something so profoundly and so obviously wrong that it gives rise to fundamental questions about his integrity and honesty. Those questions, in the Commissioner's submission, cannot be dismissed simply by pointing to an addiction.

5. That the Commissioner sees this as serious misconduct, requiring a serious disciplinary response, is a legitimate view taken on a case. It does not render him a villain. It does not make him unenlightened. It certainly does not mean he stands alone with a "philosophy" that is not shared by others. There is far from any unified collective view in society on the question of whether a drug addiction should exempt people from criminal or professional disciplinary consequences, when their conduct is criminal in nature. As we argue later in this submission, reasonable members of the public would hardly be upset to hear that dismissal was being suggested for a police officer who had committed 11 acts of police misconduct, over seven months, culminating in blatant dishonesty to RCMP officers in a criminal investigation.

6. In short, the Commissioner sees this as significant and deliberate misconduct that cannot be explained away or excused by pointing to an addiction, even if it must be understood as involving an addiction. The Member obviously disagrees. That is a legitimate disagreement. But — apart from rhetorical value — it is unhelpful to the Adjudicator's process to frame the question as involving an unenlightened "bad guy" versus all others. And this argument runs far away from the realities of this case. It is a straw man argument.

7. Second, the Member says that the provincial *Human Rights Code* mandates a duty to accommodate an employee with a drug addiction, and that this rule must prevail and require a particular outcome in this case.[1] While the Adjudicator will obviously be

[1] At para. 14 of his submission, he asserts that a dismissal here "would constitute discrimination" prohibited by the *Human Rights Code*.

aware of this human-rights concept, it is facile and misguided to say that the adjudication of the correct disciplinary or corrective measures in this case is something predetermined by that human-rights principle. This is not a "duty to accommodate" case, and this review is not a labour- or employment-law hearing focusing on the correctness of what an employer has done.[2] This is police discipline, under the *Police Act*. It involves broader questions as to the public interest and public confidence in the police disciplinary system. The question is what discipline is appropriate for this officer, because of his own admitted misconduct. Commission counsel says the parties should make arguments about this question, and the Adjudicator should decide it, without transforming this review into a human-rights "duty to accommodate" hearing.

8. Third, the Member criticizes commission counsel's reliance on the investigation report and the decisions of the prior discipline authority. He says it is a failing not to have quoted from the *viva voce* evidence at the disciplinary proceeding. This is passing strange, as the Member in this case admitted to the contents of the final investigation report, and even quotes it at length (para. 105). When a trial decision goes to appeal, it is vastly preferable to rely on the trial judge's reasons which set out findings of fact and credibility, rather than going to voluminous transcripts and saying "some witness said something, somewhere". That is all that the commission counsel written submission did; it is standard fare; it is nothing to complain about. This is a variation on a straw man argument: "they have failed to go to the right evidence, so they cannot be relied on". Of course here, on examination, that is untrue. The Member identifies not one factual assertion made by commission counsel that is incorrect.

9. The Member uses a fourth straw-man argument in asserting that commission counsel is wrong to say that the *Police Act* contains no statement of purposes and principles. What our previous submission said was that the *Police Act* does not have anything akin to the statement of general purposes and principles governing sentencing, as appears in the *Criminal Code* or *Youth Criminal Justice Act*. There is no statement about the aims of ensuring public safety, achieving denunciation, general and specific

[2] And if it were, it is not apparent that any "duty to accommodate" would arise in relation to a member of an independently governed profession who had been found to have committed serious "professional misconduct".

deterrence, restraint, proportionality, rehabilitation, considering First Nations offenders' over-incarceration, restorative justice, parity between like offenders, parity within a region, etc. It is misleading to pretend that the one statutory direction in s. 126(3) to favour corrective measures where possible, is anything remotely comparable to those kinds of statements of overarching purpose and principle. (We address the specific s. 126(3) argument below.)

10. The Member's approach in his submission is to create a series of straw men, so he can knock them down. It is, with respect, a petty and unhelpful style of argument. Rather than engaging on the merits of the case — what went on and what should result — he spends most of his energy in attacking the Commissioner. At the end of the day, just as an accused may be unhappy about his prosecutor in a criminal trial, that is really beside the point. What matters is the evidence.

Why dismissal should be considered here

11. Ultimately, this police officer repeatedly, over many months, uttered many forged documents. He did so for personal ends, not in some misguided effort to serve the public good. His circumstances are sympathetic and there is no question he has endured a horrible set of health problems. But he is not without blame for what he did, so many times. The matter culminated in the most serious misconduct: lying deliberately and knowingly to the police, in an apparent effort to obstruct and terminate a criminal investigation. The Member acknowledged that he knew what he was doing was wrong: he turned his mind to the rightness of his conduct, and proceeded anyway.

12. It is fair to say that commission counsel has taken a stern and serious position in relation to that misconduct, suggesting the most serious type of discipline available. That is because the Commissioner sees this as a bright line to be drawn. If a police officer lies to police officers in the course of a criminal investigation, that is reprehensible and unforgivable dishonesty. For such glaring dishonesty to be overlooked sends a message to police officers and the public that our culture has

reached a moment of such acceptance of dishonesty that we do not even pretend to care anymore.

13. To put it in simple terms, when an officer actively and knowingly lies to police officers in the course of a criminal investigation, that misconduct is serious and it may merit dismissal. It cannot be overlooked as mere “misstatement”, as the Member suggests. A misstatement occurs when a person says they arrived in the city four days ago, then corrects it to five days. This was no misstatement. This was lying to the police.

14. This submission connects to the s. 126(3) issue which the Member argues at length. In response, commission counsel does not say the previously imposed discipline was “unworkable”, in the sense that it could not be carried out. But that discipline was, in our submission, so wholly lacking in severity as to undermine public confidence in police discipline in the province.

15. To consider that point, it bears stepping back and taking account of the history and context of police oversight in the province. Through a series of reforms over the past decades, our province has moved continually in the direction of more independent and civilian oversight of police misconduct, and away from the old approach of “cops watching cops”. Too often, that approach saw officers giving fellow officers a “gentleman’s pass” (most were indeed men). The public, quite simply, no longer tolerates outcomes like that. They undermine public confidence in policing and police discipline. To the contrary, the public pays attention to police misconduct cases to ensure that police offices are treated both as fairly and as seriously as other people.

16. In the present case, the misconduct includes the deliberate lying in the context of a police investigation, aimed solely at thwarting any effective police investigation. It is true that the police face such dishonesty on a regular basis. But it is far from true that this happens in cases involving police-officer suspects. Police officers tend to be sophisticated about the investigative process, aware of their rights to counsel and to silence, and of the risk that any dishonesty could constitute an obstruction of justice. Here, the Member’s lack of judgment was basic and deeply troubling. In our submission,

reasonable members of the public who heard that a police officer forged a series of medical prescriptions, and then lied to the police about it, would conclude the officer simply could not continue in policing.

17. There is no dispute that the Adjudicator should take into account the Member's addiction, which is the context for his misconduct and which offers some explanation for how he found himself in so prolonged and serious a course of conduct. But the existence of addiction in relation to criminal conduct is hardly novel; it is a recurrent feature in a great many criminal cases. Those innumerable offenders must still face the penalties and consequences that arise in the criminal courts, even though they committed a criminal act while addicted to drugs. The judge (or Adjudicator) must calibrate the person's level of blameworthiness, the seriousness of the act(s), and other considerations such as the need to deter others, denounce the conduct, and rehabilitate the offender. It is in this context that commission counsel submits that dismissal is the appropriate measure in this case.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF OCTOBER, 2018,

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Brock Martland