

**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
ORDERED WITH RESPECT TO CONSTABLE GEOFFREY YOUNG OF THE DELTA POLICE
DEPARTMENT**

REASONS OF THE ADJUDICATOR ON THE SCOPE OF THE REVIEW

TO: Constable Geoffrey Young
AND TO: Mr. Kevin Woodall, Counsel for Constable Young
AND TO: Mr. Brock Martland, Commission Counsel
AND TO: Chief Constable Len Goerke, Discipline Authority
AND TO: Mr. Stan Lowe, Police Complaint Commissioner

Background:

On April 27th, 2018 Constable Geoffrey Young was served with a Form Four, Finding of Disciplinary Authority setting out the misconducts that the Disciplinary Authority had found were substantiated as well as the disciplinary and corrective measures that were being imposed. The same form advised the officer that if he were aggrieved by the disposition of the case he could file with the Police Complaint Commissioner a written request for a public inquiry or a review on the record. Such an application, it was noted had to be made within 20 business days. Young did not make an application.

The Police Complaint Commissioner also received a copy of the Finding of the Disciplinary Authority and upon reviewing it determined that there was not a reasonable basis to believe that the Discipline Authority's determination as to whether the misconducts had been proven was incorrect pursuant to section 125(1) of the *Police Act*. He was of the view, however, that the Discipline Authority's application of section 126 of the *Police Act* was incorrect. In particular it was his view that the Disciplinary Authority had erred in his determination that the 10 allegations of falsifying a

prescription and one allegation of providing false information to the RCMP were mitigated to such a degree by virtue of Constable Young's addiction to Hydromorphone. Based on these views, on June 6th, 2018, the Commissioner ordered a Review on the Record pursuant to section 137(2) and 141 of the *Police Act*. The Notice of Review on the record specifically directed that the Review on the Record would consist of a review of the *disciplinary decision as defined by section 141(3) of the Act*. No provision was made for a review of the findings of misconduct.

Counsel for the member submits that since section 141 requires the adjudicator to decide whether any misconduct has been proven and then determine the appropriate disciplinary or corrective measures to be taken, both matters must be open for review. He says that the Police Complaint Commissioner, once he orders a Review on the Record, does not have the power to limit the jurisdiction of the adjudicator. Notwithstanding the fact that Constable Young did not himself request a review when he was entitled to do so, counsel now wishes to revisit the findings of misconduct.

The hearing of the oral submissions on this review is set for September 11th, 2018 and it has been agreed that a decision on the scope of the review would be helpful to counsel as they prepare for this hearing.

Analysis:

The Honourable Wally Oppal, QC, dealt with this issue in the case of Bundarla and O'Rourke, a decision rendered under this act on the 16th of April 2018. He found that the Commissioner was acting within his authority in ordering a review limited to the issue of sanctions. While I am not bound by his decision, issues of comity must be considered.

In *Re Hansard Spruce Mills Ltd.*, [1954] 4 D.L.R. 590 (B.C.S.C.) Wilson J. said:

I will only go against a judgment of another Judge of this Court if:

- (a) Subsequent decisions have affected the validity of the impugned judgment;
- (b) it is demonstrated that some binding authority in case law, or some relevant statute was not considered;
- (c) the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

I adopt this reasoning and since none of the exceptions apply, I find that the Commissioner has the authority to restrict a review on the record to the issue of sanctions.

Characterizing the misconduct:

Mr. Woodhall suggests that he will be hard pressed to make appropriate submissions when the two sides on this issue view the misconduct through different lenses. He takes umbrage with Mr. Martland's characterization of the misconduct as criminal behaviour and says that implicit in his reasons, the Discipline Authority did not view it that way. The findings of misconduct and the evidence upon which they are based are contained on pages 1 to 42 of the Final Investigative Report prepared by Acting Staff Sergeant Kevin Jones. These were adopted by Chief Constable Len Goerke when he submitted his S112 Notice of Discipline Authority's decision. This then, should be our starting point. The Discipline Authority's views of the extent to which Constable Young's addiction might be a mitigating factor or on whether it negated what might otherwise have been seen as criminality were part of his deliberations as he wrestled with the task of arriving at suitable disciplinary and corrective measures and do not form part of the determination of misconduct.

Dated at Surrey, BC this 21st day of August, 2018

The Honourable Carole Lazar