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

SUBMISSIONS OF COMMISSION COUNSEL ON DISCIPLINE

1. These are the submissions of commission counsel made in this review on the record pursuant to s. 138 of the BC *Police Act*, R.S.B.C. 1996, c. 367, as amended.

1. Introduction

2. Constable Geoffrey Young of the Delta Police Department (the "Member") is the subject of a review in which the Adjudicator must determine what disciplinary or corrective measures are appropriate. The case involves an officer who, on 10 occasions over seven months, forged medical prescriptions and (until the last date) successfully relied on those forged prescriptions to obtain painkiller drugs. It also involves a deliberate dishonest story the Member gave to the RCMP when they investigated the matter.

3. Commission counsel takes the position that the repeated and serious instances of misconduct in this case mandate dismissal. That is the only proportionate and appropriate sanction for such significant, prolonged and troubling a course of conduct. The officer's dishonesty in the course of a criminal investigation is particularly

disturbing, as it reveals a breach of the public's trust when he attempted to deceive police officers for his own personal ends.

4. (By way of an application to the Adjudicator, the Member has argued that the *Police Act* must be interpreted such that this review involves a reassessment of findings of misconduct, in addition to the issue of the appropriate disciplinary or corrective measures (or "sanctions"). Through separate submissions, commission counsel argues that this review on the record is restricted to the sanctions issue. Our approach here is to proceed to the question of sanctions. In the event the Adjudicator determines that the Member succeeds in his application, then it would become necessary to address the question of whether or not misconduct is established. In that situation, commission counsel reserves the right to address that question.)

2. Facts

5. The record in this matter includes the Final Investigation Report (submitted 12 January 2017) ("FIR") and the Further Investigative Report (submitted 19 September 2017). In addition, it includes the decisions rendered by the discipline authority, West Vancouver Police Department Chief Constable Len Goerke. His findings with respect to misconduct are set out in his Form 3 Findings of Discipline Authority dated 9 April 2018 ("DA Misconduct Decision"). His conclusions with respect to sanctions are set out in his Form 4 Findings of Discipline Authority dated 27 April 2018 ("DA Sanctions Decision").

6. In the DA Misconduct Decision, at para. 39, the discipline authority noted that the Member admitted the facts of the allegations, "including altering prescriptions and lying to RCMP officers".

7. The FIR, authored by Delta Acting Staff Sergeant Kevin Jones, contains a useful summary of the facts of the case (at pp. 1-2):

> On November 8th, 2015, Constable Geoffrey Young, a six and one half year member of the Delta Police Department (DPD) attended Peace Arch Hospital (PAH) in White Rock, BC and obtained a prescription for Hydromorphone [a

narcotic pain medication]. The original prescription was for six – four mg tablets. Constable Young altered the prescription quantity from six (6) to sixty (60) tablets by writing a zero next to the number 6, and by writing the letters ‘ty’ next to the word six. Constable Young then attempted to obtain the altered prescription from a Safeway Pharmacy.

When the pharmacist suspected that the prescription was altered, they sent a copy of the prescription to PAH for confirmation. Constable Young left the pharmacy when advised of the confirmation. Later that same day, Constable Young re-attended PAH and attempted to obtain a new prescription by telling hospital staff that the original prescription was lost in the parking lot.

After confirming with the prescribing doctor that the prescription had been altered, a nurse at PAH contacted the Surrey RCMP. While attending the complaint, the RCMP were made aware that Constable Young was present at the hospital and spoke with him.

During a conversation with the RCMP, Constable Young was untruthful when he told the police he lost the original prescription, told the police he had not been to the Safeway Pharmacy, and told the police that he had not altered a prescription.

The Surrey RCMP conducted an investigation and Constable Young was charged with the criminal offence of ‘Utter Forged Document’. Crown Counsel approved two charges: one count of ‘Forgery’ and one count of ‘Attempt or cause a person to deal with a forged documents’.

Constable Young’s charges were dealt with by way of ‘Diversion’. Constable Young agreed to and completed ten hours of community service at Langley Animal Protection Society.

During their investigation, the RCMP obtained a Production Order (PO) from PharmaNet. The PO listed several prescriptions filled for Hydromorphone by Constable Young between the period of April 2015 and November 2015.

Information regarding the charges and investigation of Constable Young were forwarded to the Office of the Police Complaints [*sic*] Commissioner (OPCC) as per the Police Act. An ‘Order for Investigation’ was given by the OPCC on December 4th, 2015.

The DPD Professional Standards Section conducted an investigation and there appeared to be several other alterations of prescriptions. Constable Young was interviewed and all the evidence was presented to him. Constable Young admitted to three allegations from the original Order for Investigation and

admitted to altering several other prescriptions. As a result of the interview DPD PSS requested an Amended Order for Investigation. The OPCC amended the 'Order for Investigation' for a total of eleven (11) allegations.

During both the Surrey RCMP and DPD PSS investigations, Constable Young disclosed that he began taking narcotic pain medication in January of 2014 due to complications from a serious medical disorder. Constable Young further disclosed that he had become addicted to Hydromorphone.

8. The discipline authority in the DA Misconduct Decision found that all 11 allegations of discreditable conduct were proved (*Police Act*, s. 77(3)(h)). Ten of those allegations involved falsifying prescriptions. The eleventh allegation (#3 in the Decision and FIR) involved providing false information to the RCMP during a criminal investigation.

9. With respect to that allegation, the FIR provides additional detail on how the Member lied to the RCMP, when they interacted with him at the Peace Arch Hospital the evening of 8 November 2015 (at p. 26):

> Corporal Bell met with Constable Young in a private waiting room along with Constable Kelln and Constable Lamoureux. Constable Young was advised that police were investigating a report of prescription fraud. Further, Constable Young was told that anything he said could be given in evidence and he could speak with a lawyer if he wished to do so.
>
> When it was explained to Constable Young that a prescription was used fraudulently at a pharmacy, Constable Young stated he had lost his prescription somewhere in the hospital parking lot and that he had not been in any pharmacies at all that day or that night.
>
> Corporal Bell asked Constable Young if he had any knowledge of any other previous frauds involving prescriptions that were issued to him and altered. Constable Young told him that someone had found a prescription he had lost a year prior and had used it fraudulently. Constable Young was asked about any incidents in the prior few months and he stated he did not know of any. Constable Young advised he was a police officer when asked what he did for a living.

10. The discipline authority reviewed and summarized evidence from the Member's testimony (DA Misconduct Decision, paras. 71-82) and Dr. Farnan (paras. 83-87). He found the Member was addicted to hydromorphone and that his behaviour "was influenced by his addiction to opioids, but his addiction did not pre-determine his choices" (para. 89). The Member "chose to feed his addiction by altering the prescriptions… and chose to lie to the police when caught. There was volition, planning and careful action involved in altering a prescription" (para. 90).

11. The discipline authority went on to impose sanctions as follows (DA Sanctions Decision, paras. 22-23). For the ten allegations involving falsifying a prescription, the Member was given a written reprimand and required to participate in sobriety monitoring and treatment programs. For the allegation involving lying to the RCMP, he was given a four-day suspension.

12. On 6 June 2018, the Police Complaint Commissioner directed this review on the record with respect to the issue of sanctions: Notice of Review on the Record. He noted as relevant factors in his decision (para. 22):

> 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.

3. The legal test

13. The *Police Act* uses the term "disciplinary or corrective measures" to refer to the appropriate sanction for an officer found to have committed misconduct. In determining the appropriate sanction, the Act in s. 126(1) provides a menu of options, as follows:

(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.

(These sanctions may be combined; that is, two or more may be used for a particular instance of misconduct.)

14. The Act does not offer much guidance for decision-makers who must determine the appropriate disciplinary or corrective measure. It does not contain anything akin to the purpose and principles of sentencing in the *Criminal Code* or *Youth Criminal Justice Act*, for instance. The Act says, in s. 126(2), that the adjudicator is to determine what measures are “just and appropriate”.

15. Section 126(2) then provides a non-exhaustive list (“including, without limitation”) of aggravating and mitigating circumstances. These are to inform the adjudicator or discipline authority’s determination of the appropriate sanction. We canvass each of these listed factors below.

16. Finally, s. 126(3) calls for a remedial rather than punitive approach, where possible:

> 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.

17. With respect to reviews on the record such as this, the *Police Act* provides that the Adjudicator is to review the record on the disciplinary decision (that record being defined in s. 141(3)). The officer involved is not compellable but may make submissions (s. 141(5)), as may commission counsel (s. 141(6)), and any complainant or discipline authority/discipline representative (s. 141(7)). The standard of review is correctness (s. 141(9)).

4. The appropriate sanction in this case is dismissal

18. We proceed in this section to address each of the identified factors in s. 126(2), before turning to a general overall discussion of the appropriate sanction for the Member.

a) Seriousness of the misconduct (126(2)(a))

19. Each of the 11 instances of misconduct is individually serious. All involve dishonesty and deceit. Collectively, they amount to a prolonged course of conduct that shows a basic lack of trustworthiness and integrity. The conduct at issue is of the sort that brings discredit to the Delta Police Department and to the police generally, because it involves a police officer forging official medical documents and then using them to engage in fraud, so that he could get drugs for himself. In addition, it saw a municipal police officer engaging with RCMP officers in the context of a criminal investigation in a most disturbing way. Rather than exercising his right to silence (as he was entitled to do and as the police advised him of), he attempted to mislead the police and obstruct their criminal investigation by giving them blatantly false information.

20. This misconduct involves basic and glaring dishonesty.

21. The misconduct has undermined, or would undermine, public confidence in the police. Any sanction falling short of dismissal sends a message that this sort of deliberate dishonesty, for personal gain, will be tolerated. It endorses a dynamic that

such lying can be overlooked, and that an officer can continue in policing despite repeated dishonesty amounting to criminal conduct. This is the wrong message. That approach would undermine the public's confidence in the police disciplinary process and the handling of complaints about police officers. To be effective, police officers must have and retain the public's trust. Their integrity should be high, because the public will lose trust in an institution that fails to deal severely with officers who lack integrity. Police officers are responsible for enforcing the law and addressing criminality. They have many special powers that ordinary citizens do not, which intrude in significant ways on citizens' liberty and privacy. Police officers need not be perfect. But it is untenable to expect that there will be no negative effect on public confidence, if an officer proved to be lacking in basic integrity and honesty is permitted to carry on.

22. The misconduct at issue amounts to criminal conduct. Although the Crown in its discretion resolved the case by way of diversion, it bears noting that diversion agreements require the accused person to admit to the criminal offence; that is the premise upon which a first-time offender may be given an unusual grant of leniency, and steered out of the formal court system. That the conduct at issue here is criminal in nature is a serious aggravating feature.

23. In commission counsel's submission, when faced with numerous instances of misconduct, the Adjudicator should not isolate individual acts and treat each one in isolation. Rather, the cumulative effect of the entire course of (mis)conduct should be considered. The sanction or sanctions imposed should reflect the seriousness of the entirety of the officer's behaviour.

24. The seriousness of the misconduct is, in our submission, the most important factor for determining the appropriate sanction. As in the criminal courts, there are cases that are just so serious that, no matter how compelling or sympathetic the offender's personal circumstances may be, the *offence* itself calls out for a significant sanction. That is so here. For the sanction to be proportionate to the misconduct and the level of moral blameworthiness, it must be dismissal.

b) Record of employment and service record of discipline (126(2)(b))

25. The Member has no service record of discipline (confirmed with the Delta Police Department), so this is not a relevant consideration. We note below, however, that had the Member's misconduct matters unfolded in a different way procedurally, with separate proceedings for individual allegations, he would be an officer with a significant service record of discipline.

c) Impact of the proposed sanction on the member (126(2)(c))

26. Obviously dismissal would have a serious impact on the officer, his family and career. Yet in our submission it should not be surprising that repeated dishonesty, combined with a deliberate attempt to mislead police investigators about the truth, is career-ending. While unfortunate in particular for the Member's family, this is a necessary consequence. And personal sympathy for others is not a compelling reason to reduce the fit and appropriate sanction. It is hard to envision how the officer could continue as an effective officer given the backdrop of such fundamental failings at a moral and professional level.

d) Likelihood of future misconduct (126(2)(d))

27. While the officer has no other record of misconduct, it is significant that the misconduct here took place over seven months involving no less than 10 separate dates. It culminated in the decision to mislead RCMP investigators. The cumulative picture is not a happy one. Rather than a one-time isolated instance, or an episode arising in the immediacy of an intense confrontation, this was slow-motion and repeated misconduct.

28. In particular, the decision taken by the officer to mislead the RCMP illustrates that — faced with a difficult situation and under pressure — the Member proved himself incapable of behaving ethically. He lied. He did so deliberately. And he did so for his

own personal reasons, primarily to avoid a criminal charge obviously, and secondarily he asserts that he wanted to avoid his wife finding out about his addiction from the police.[1] He placed himself above the law and above a moral code requiring basic honesty and integrity.

29. If the Member were to continue serving, it is likely that he would encounter other intense situations — moments in which there is a choice between doing the right thing, and taking the easy way out. It is unrealistic to expect that he will do the right thing. His conduct suggests he lacks a clear moral direction, and in the face of pressure he will take the path that serves his own interests rather than the truth.

30. The question is more involved than asking whether the Member will again use painkiller drugs or become addicted. It appears he has done admirably in overcoming his addiction. But, as the discipline authority noted in reviewing Dr. Farnan's evidence, an addiction does not deprive the person of willpower or mean they lose control over their behaviour (DA Misconduct Decision, at paras. 85 and 89-92). Our submission is not that the Member is likely to commit misconduct in the future because of a return to drugs or painkillers. Instead, we say that he may well commit future misconduct because his track record in the 11 matters now at issue suggests this. He faced a crucible when the RCMP interacted with him in November of 2015. And in that moment, despite begin given *Charter of Rights* warnings and appreciating the seriousness of deceiving the police, and despite having the option of simply remaining quiet, he failed severely. Moreover, the officer proved, through the 10 different occasions on which he forged medical documents, that he has a capacity to deceive and behave improperly.

[1] Although he gave this explanation, it appears to contradict his own admission that his wife knew of his drug addiction at a much earlier stage. In his Professional Standards interview on 9 November 2016 at pp. 37-38 (appended to the FIR at PDF p. 122-123), he said:

> And of course you know, I had to find a new doctor, and [redacted] was someone that was taking on patients in [redacted]. And uh, so he, you know, he was tending to me throughout all my hospital stays and he knew, he knew that I was addicted to pain meds, but he would never talk to me about it. He would never tell me. He'd phone [my wife] at home and tell her, which I didn't think was very ethical of him. But he would call her and tell her that your husband's an addict. And she's like, well, okay, what am I supposed to do with that information? And he didn't uh... Anytime I went to his office he would just write, write prescriptions. And we had no, we had no plan.

31. The sheer volume of misconduct incidents here establishes a pattern of continued deliberate wrongdoing. Had the allegations arisen or been processed separately, the Member would be facing a sanctions hearing with a significant prior service record of discipline. He should, in our submission, be treated as such.

32. Through his repeated misconduct, the Member has established that he is likely to commit misconduct again. While his headway in confronting an addiction is laudable,[2] it does not overcome the fundamental moral failing and does not give an assurance that he would choose a path of integrity in the future.

e) Whether the Member takes responsibility and will take steps to prevent recurrence (126(2)(e))

33. The Member takes responsibility and has shown himself willing to work hard at achieving and maintaining his sobriety. This factor is mitigating. Its value, however, is limited. Aside from his sobriety from drugs, the Member appears to lack the moral compass that will enable him to steer clear of misconduct and unethical behaviour in the future. Not every fork in the road will have clear "right" and "wrong" paths. The Member's lack of judgment gives rise to the question of whether he is equipped to make moral decisions in unclear situations.

f) Did the Department's policies or procedures, or a supervisor's actions, contribute to the misconduct? ((126(2)(f))

34. There appears to be no basis to see this as a case in which the Delta Police Department's policies or procedures had any influence or impact. This is a non-issue.

[2] In relation to his sobriety, Chief Constable Goerke's analysis is nuanced and guarded in its optimism. In the DA Sanctions Decision, he concluded that *if* the Member stays sober, the likelihood of recurrence is low, but of course the discipline authority did not offer any prognosis as to continued sobriety. The relevant passage is para. 16:

> Addictions are complex medical and psychological issues; therefore, it is difficult to determine the likelihood of future misconduct. Cst. Young appears to have taken all reasonable measures to address his addiction. Dr. Farnan described him as being in 'stable abstinent remission'. If he stays on his current course, the likelihood of recurrence is low. This is a mitigating factor.

g) The range of sanctions taken in similar circumstances (126(2)(g))

35. In our submission, the relevant police discipline decisions support the sanction of dismissal here.

36. In various cases, a single instance of dishonesty or deceit is sufficient for an officer to be dismissed. Here, we have 11 instances over seven months.

37. In the DA Sanctions Decision, at para. 20, Chief Constable Goerke referred to case synopses provided by the Office of the Police Complaint Commissioner. We have obtained that synopsis and enclose it as an appendix to these submissions. Relying on the numbering of cases used in that document to refer to the decisions, we offer the following comments:

- In many of the decisions, police officers made statements that were untrue, to fellow police officers conducting professional-standards investigations, and this led to dismissal.
    - Decision 1; Decision 2; Decision 3; Decision 7; Decision 8; Decision 10; Decision 11; Decision 13; Decision 14; Decision 16.
- In some cases, false oral statements made to professional-standards investigators did not result in dismissal but instead lengthy suspensions.
    - Decision 4 (20 days); Decision 5 (28 days); Decision 6 (30 days); Decision 9 (10 days; misleading description given to a supervisor about the nature of a relationship); Decision 12 (reduction in rank and 14-day suspension, following months of suspension without pay); Decision 15 (30 days).

38. In the context of a *Police Act* disciplinary investigation, pursuant to s. 101, an officer is required to cooperate and answer questions. So in the cases noted above, officers were compelled to answer questions, and their misleading answers would have

had the effect of obstructing a professional misconduct — rather than criminal — investigation.[3]

39. In contrast, in the present case, the Member was the subject of a criminal investigation. He was told of his *Charter* rights and must have known from his own policing experience that he had the right to silence and the right to counsel. He had the option of staying quiet. In those circumstances, it is aggravating that he chose to make a statement and then gave information he knew to be untrue. The aim of the statement was to thwart a criminal investigation, a more serious type of obstruction.

40. In sum, in many although not all cases, police officers who engaged in dishonesty, especially in dealing with fellow officers conducting investigations or inquiries, have faced dismissal.

41. Inasmuch as s. 126(2)(g) refers to the range of sanctions, the cases set out in the appendix confirm that the range is from suspension to dismissal. There is strong support for dismissal, but it is not mandated as a necessary outcome by virtue of the precedent decisions. Put differently, these "range" cases are useful in understanding what sanctions have been imposed in comparable situations involving officer dishonesty. But each case falls to be decided on its facts, and there is no prescribed necessary outcome arising from precedents.

42. In the present case, there is ample support for dismissal for the Member.

h) Other factors (126(2)(h)), and general determination of the sanction

43. This is a review on the record in which the Adjudicator, pursuant to s. 141(9) of the *Police Act*, must correctly determine what the appropriate sanction is. Although called a "review on the record", it is less an appeal or review of a previous decision, and more of a reconsideration of what sanction is appropriate based on the entire record.

[3] The *Police Act* compelled statement could not be used in any criminal prosecution, being a compelled statement, pursuant to both the common law and s. 102 of the *Police Act*.

44. Having noted this, we respectfully submit that the discipline authority, Chief Constable Goerke, may have improperly weighed proper considerations in his determination of sanctions. In particular, he overemphasized the mitigation arising from the fact that the Member was addicted to hydromorphone. While he made the nuanced point that the addiction was not a *significant* mitigating factor with respect to the misconduct of lying to the RCMP, it was nonetheless a mitigating factor (this is plain from a careful reading of paras. 11-12 of the DA Sanctions Decision). While the addiction is a relevant contextual consideration, ultimately we say it is not a mitigating factor in relation to the very deliberate decision not just to stay quiet, but to actively mislead the police in a bit to thwart a criminal investigation. For an officer to do that is completely unacceptable and it should not be minimized because he had a drug dependency at the time.

45. The discipline authority, motivated by a desire to encourage and facilitate the Member's efforts to maintain his sobriety, imposed a creative and structured type of sanction for the 10 allegations involving falsification of prescriptions. His aim was laudable and his approach logical. However, to allow these numerous instances of criminal dishonesty to slide by with only a "reprimand" as the official sanction, is completely unacceptable. Any one of these instances of misconduct, standing alone, might merit a suspension. The cumulative effect of all of them is far more severe. A reprimand is virtually the lowest form of sanction available in the s. 126(1) menu. It may be appropriate for a minor type of misconduct, but not for repeated and admitted criminal forgery.

46. On the basis of the submissions made, commission counsel asks that the sanction of dismissal be imposed as a "global" disposition for all 11 misconduct allegations before the Adjudicator. In the alternative, it is open to the Adjudicator to impose dismissal for the allegation involving lying to the RCMP, but consecutive multi-day suspensions for each of the 10 allegations of falsifying prescriptions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26th DAY OF JULY, 2018,

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Brock Martland