



Office of the
Police Complaint Commissioner

British Columbia, Canada

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 Constable
Marty Steen of the Victoria Police Department**

OPCC File: 2018-14638
April 9, 2019

To: Constable Marty Steen, #321 (Member)
c/o Victoria Police Department
Professional Standards Section

And to: Deputy Chief Constable Colin Watson (Discipline Authority)
c/o Victoria Police Department
Professional Standards Section

And to: Chief Constable Del Manak
c/o Victoria Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On April 12, 2018, the Office of the Police Complaint Commissioner (OPCC) received information from the Victoria Police Department (VicPD) in relation to an incident which occurred in February 2018.
2. According to the Victoria Police Department, Constable Steen attended a work conference in Vancouver, British Columbia, on February 14, 15 and 16, 2018. In early April 2018, Deputy Chief Constable Ing learned of a rumour that Constable Steen had only attended the first day of the conference. This appeared to be a performance management issue. As a result, Constable Steen's supervisor spoke to him regarding his level of attendance at the conference. During this conversation, Constable Steen advised that he attended all but two of the presentations. Two other Victoria Police Department members were questioned and stated that they observed Constable Steen on the second day of the conference. Constable

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Steen's supervisor followed up with him and Constable Steen further stated that while he attended sessions on February 15, he attended only one session on February 16.

3. In the course of their internal investigation, the Victoria Police Department made further discoveries regarding Constable Steen's conduct and provided this information to the OPCC. Specifically, the evidence obtained supported the contention that Constable Steen's attendance at the conference did not meet departmental expectations. This was of concern as the Victoria Police Department paid for the conference and Constable Steen failed to meaningfully attend.
4. Further, records supported that Constable Steen knowingly provided false or misleading information to his supervisor regarding his conference attendance. Finally, Constable Steen submitted expense claims that were of questionable legitimacy in light of his early departure from the conference.
5. On July 26, 2018, the Victoria Police Department provided additional information to the OPCC. In particular, Constable Steen gave a statement in which he admitted that he was not truthful regarding his attendance and indicated that he provided false or misleading information to his supervisors on March 29 and April 11, 2018. Further, it was established that Constable Steen did not attend any conference sessions on February 16, 2018, and submitted expense claims for lunch on February 15 and February 16 despite lunches being provided at the conference on those dates.
6. On July 30, 2018, after reviewing the information forwarded by the Victoria Police Department, former Police Complaint Commissioner Lowe ordered an investigation into the conduct of Constable Steen pursuant to section 93(1) of the *Police Act*. Victoria Police Professional Standards investigator, Sergeant Bill Gubbins, conducted an investigation into this matter and on October 12, 2018, submitted the Final Investigation Report (FIR) to the Discipline Authority.
7. On October 25, 2018, following his review of the FIR, Deputy Chief Constable Colin Watson, as the Discipline Authority substantiated two allegations of misconduct: *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* and *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*. Deputy Chief Watson determined that Constable Steen failed to attend any training sessions at the conference on February 16, 2018; that on March 29, 2018, Constable Steen provided false or misleading information regarding his conference attendance to Staff Sergeant King and Inspector Lindner; and that on April 11, 2018, Constable Steen continued to provide false or misleading information regarding his conference attendance to Staff Sergeant King.
8. Deputy Chief Watson considered the following range of corrective and disciplinary measures: *Neglect of Duty*- written reprimand up to suspension without pay; *Deceit*- suspension without pay up to reduction in rank. Deputy Chief Watson noted that, under the *Police Act*, he was not permitted to offer Constable Steen a Prehearing Conference as he

determined that the range of disciplinary or corrective measures being considered included reduction in rank.

Discipline Proceeding and Proposed Discipline

9. On March 7, 2019, 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 February 16, 2018, Constable Marty Steen, committed the disciplinary default of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do. Specifically, Constable Steen failed to attend any training sessions at the conference on February 16, 2018.

Proposed Disciplinary Measure – Verbal Reprimand

- (ii) That on March 29 and April 11, 2018, Constable Marty Steen, committed the disciplinary default of *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act* which is in the capacity of a member, making or procuring the making of any oral or written statement that, to the member's knowledge, is false or misleading. Specifically, that on March 29, 2018, Constable Steen provided false or misleading information regarding his conference attendance to Staff Sergeant King and Inspector Lindner and on April 11, 2018, Constable Steen continued to provide false or misleading information regarding his conference attendance to Staff Sergeant King.

Proposed Disciplinary Measure – Reduction in rank (revocation of pending appointment to the rank of Sergeant)

10. In arriving at his determination, Deputy Chief Watson noted that:
- a) At the discipline proceeding for this matter, Constable Steen admitted to the two remaining counts of misconduct.
- b) Constable Steen is a senior, experienced police officer who had, at the time of the initiation of the *Police Act* process and following a comprehensive selection process, been appointed to a ranked eligibility list for promotion to the rank of Sergeant. The Chief Constable, under his discretionary authority, decided to delay the promotion pending the *Police Act* investigation.
- c) Constable Steen submitted that the *Deceit* in this matter attracts disciplinary or corrective measures but that the context of those measures must take into account the context of the lies. Constable Steen submitted that "lies fall on a broad spectrum, taking into account both what the lie is covering up, and the nature of the trust relationship that the lie undermines".
- d) It was his view that a substantiated finding of *Deceit* by a police officer, in any context, is serious. Deputy Chief Watson agreed with Constable Steen that the circumstances here are, in one context, less serious than cases that directly impact a

- member of the public or directly impact the administration of justice, it is nonetheless a serious matter.
- e) Constable Steen submitted that there is “zero chance of future misconduct” and that this matter represented a lapse in judgement that is out of character. Deputy Chief Watson was unclear as to the potential for future misconduct by Constable Steen. Deputy Chief Watson remained somewhat troubled that although Constable Steen acknowledged the conduct related to the disciplinary defaults once the formal investigation began, there appeared to be some focus on explanations for the conduct rather than the taking of full responsibility.
 - f) In establishing appropriate disciplinary or corrective measures for the *Deceit* matter, Deputy Chief Watson determined that he could not ignore that Constable Steen was set to be promoted to the rank of Sergeant. Deputy Chief Watson was of the view that a reasonable person would be troubled to learn that an officer would be promoted to a position of increased authority, responsibility, and influence in this type of circumstance. In addition, Deputy Chief Watson was concerned that there would be a high degree of general concern among police officers within the department with a promotion at this time.
 - g) Deputy Chief Watson proposed to revoke Constable Steen’s pending promotion to Sergeant, thereby having the effect of “reducing the member’s rank.” Deputy Chief Watson believed that this course of action was available to him under the *Police Act* and that it represented the proper outcome taking into consideration the unique aspects of the matter. It was Deputy Chief Watson’s determination that revoking the pending appointment of Constable Steen to the rank of Sergeant amounted to a reduction of the member’s rank.

Constable Steen’s request for a Review on the Record

11. Constable Steen was provided a copy of Deputy Chief Watson’s findings in relation to the allegations of misconduct and determinations on appropriate disciplinary and/or corrective measures at the discipline proceeding. Constable Steen was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Police Complaint Commissioner (“the Commissioner”) to arrange a Public Hearing or Review on the Record.
12. On March 12, 2019, the Commissioner received a request for a Review on the Record from Constable Steen’s counsel, Mr. Kevin Woodall. Mr. Woodall requested a Review on the Record pursuant to section 137 of the *Police Act* as the Discipline Authority ordered a reduction in rank.

13. Pursuant to section 137 of the *Police Act*, where a Discipline Authority proposes a disciplinary measure of dismissal or reduction in rank, upon written request from the police member, the Commissioner must promptly arrange a Public Hearing or Review on the Record.
14. I acknowledge the request of the member has been received pursuant to section 137 of the *Police Act* wherein the member is “entitled” to further adjudication of the matter due to the proposed reduction in rank; however, the proposed discipline and corrective measure of “reduction in rank” does not amount to an actual reduction in rank in these circumstances. Even though Constable Steen was set to be promoted to the rank of Sergeant, he was not promoted due to the Chief Constable exercising his discretion to not promote Constable Steen. Constable Steen remained a First Class Constable throughout the investigative and disciplinary process. Referring to this disciplinary measure as a “reduction in rank” is not correct as Constable Steen has not effectively had his current rank reduced.

Decision

15. I have determined that a Public Hearing and a Review on the Record is not an entitlement of the member pursuant to section 137 in these circumstances.
16. 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.
17. I have reviewed the record of the disciplinary decision, and the associated determinations, pursuant to section 138 of the *Police Act*, I have decided 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*.
18. However, the revocation of Constable Steen’s pending appointment to the rank of Sergeant does not constitute a reduction in rank as Constable Steen has not effectively had his current rank reduced. Therefore, I have concluded that there is a reasonable basis to believe that the Discipline Authority has incorrectly applied section 126 of the *Police Act* in proposing disciplinary measures.
19. 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 nature and seriousness of the complaint or alleged misconduct;

- 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 disciplinary or corrective measures proposed are inappropriate or inadequate;
 - d) The Discipline Authority's interpretation or application of this Part or any other enactment was incorrect.
20. I have further determined that at this time, a Public Hearing is not necessary in this particular matter. It will not be necessary to examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Further, a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. A Review on the Record is a more effective and efficient means of adjudicative review in these circumstances.
21. Accordingly, pursuant to section 141 of the *Police Act*, I am arranging a Review on the Record. As I have determined that the only reasonable basis to believe that the Discipline Authority was incorrect was in proposing discipline or corrective measures, the Review on the Record will be confined to the issue of disciplinary or corrective measures.
22. 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*, Constable Steen, or his agent or legal counsel may make submissions concerning the matters 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 matters 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 matters under review.
26. It is alleged that Constable Steen committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
- i. That on February 16, 2018, Constable Marty Steen, committed the disciplinary default of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do.
 - ii. That on March 29 and April 11, 2018, Constable Marty Steen, committed the disciplinary default of *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act* which is in the capacity of a member, making or procuring the making of any oral or written statement that, to the member's knowledge, is false or misleading.

THEREFORE:

27. A Review on the Record is arranged pursuant to section 141 of the *Police Act*.
28. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honorable Mr. Ron McKinnon, Retired Supreme 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 9th day of April, 2019.



Clayton Pecknold
Police Complaint Commissioner