

**IN THE MATTER OF THE  
PUBLIC HEARING INTO THE COMPLAINT AGAINST  
SERGEANT BRENT KELEHER  
A MEMBER  
OF THE VICTORIA POLICE DEPARTMENT**

Public Hearing Counsel –	Bradley Hickford
Counsel for the Respondent – Sergeant Brent Keleher –	David Butcher, Q.C.
Counsel for Adjudicator –	Gregory DelBigio, Q.C.
Counsel for Commissioner –	Christopher Considine, Q.C.
Dates of Hearing -	June 30, July 9, 10, August 17, 18, 19, September 16, 17, November 25, 26, 2021

**DECISION**

**INTRODUCTION**

1. Counsel for Sgt. Brent Keleher has made an application for an order redacting his name from the proceedings.

**BACKGROUND**

2. On May 16, 2022, I made a finding that Sgt. Keleher committed discreditable conduct under the *Police Act* RSBC 1996, c.367 s.77(3)(h). The discreditable conduct related to sexual activity between the complainant and Sgt. Keleher. On June 22, 2021, at the commencement of the hearing, an order was made under s.150 of the *Act* preventing the publication of the name of the complainant. Given the nature of the alleged misconduct, the prohibition order was not usual. The circumstances were somewhat unique in that a number of parties were involved in the events that led to the

finding of discreditable conduct. Thus, under the mosaic effect, the order prohibiting the publication of the complainants name was expanded to include a number of parties including Sgt. Keleher.

3. After the decision was rendered on May 16, 2022, all counsel were under the misapprehension that the complainant wished to have a continuation of the prohibition order. However, she advised Public Hearing Counsel that she was no longer concerned about protecting her identity, but she was content with having her initials being used in the proceedings. Thus, the underlying reasons to prohibit the publication of Sgt. Keleher's name have changed.

4. Mr. Butcher, counsel for Sgt. Keleher has made an application for an order that the prohibition relating to the identity of Sgt. Keleher remain in effect. The application is based on the so called mosaic effect.

5. This application for an order of prohibition is brought under s. 150 of the *Act*. That section reads as follows:

**"Power to prohibit or limit attendance or access**

**150** (1) An adjudicator may, by order, prohibit or restrict a person or a class of persons, or the public, from attending all or part of a public hearing or review on the record, or from accessing all or part of any information provided to or held by the adjudicator of a public hearing or review on the record,

(a) if there is an assertion of privilege or immunity over the information,

(b) for any reason for which must or may be expected from disclosure by the head of a public body under Division 2 of Part 2 of the *Freedom of Information and Protection of Privacy Act*, or

(c) if the adjudicator has reason to believe that the order is necessary for the effective and efficient fulfillment of the adjudicator's duties under section 141 (10) [*review on the record*] or 143 (9) [*public hearing*].

**(2) In making an order under subsection (1), an adjudicator must not unduly prejudice the rights and interests of any person against whom a finding of misconduct, or a report alleging misconduct, may be made.**

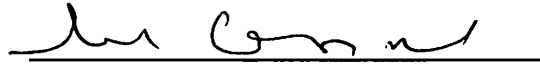
[emphasis added]

6. Counsel for Sgt. Keleher relies on s.150 (2) of the Act.

7. It is argued that the publication of the officer's name would have a devastating effect in both his private life and his employment. Moreover, the officer would suffer undo prejudice. The mosaic effect generally occurs where a number of factors or circumstances, taken cumulatively, would identify a particular individual. It is often considered in cases involving sexual allegations where there is a close relationship between a complainant and an alleged offender, that would have the effect of identifying a complainant.. As counsel quite correctly points out that the mosaic effect is often relevant in criminal cases where the publication of circumstances relating to an offence would have the unintended consequences of identifying an informant. Thus, there are valid policy reasons for preventing the publication of the name of an alleged offender where the effect would be to identify an informant. The concern is whether the publication of certain evidence would unfairly identify a person.

8. The starting point in any discussion on this issue is that hearings under the *Police Act* are open to the public, subject only to the provisions of s.150. The restrictions of prohibition must be reasonable. In this case the order of prohibition under s.150 was entirely reasonable in order to protect the privacy of the complainant, given the sensitive nature of the allegations involving sexual activity. Those concerns no longer exist since the complainant has agreed to be identified by her initials. In the circumstances of this case, I see no reason to depart from the principle of openness, so as to prevent the publication of the name of the officer. It is only in the most unusual circumstances that an order prohibiting the name of an officer ought to be made. I do not think the

circumstances of this case justify a departure from the normal practice of openness. It is for these reasons that the application is dismissed.

A handwritten signature in black ink, appearing to read 'Wally Oppal', is written above a horizontal line.

**The Honourable Wally Oppal, Q.C.**

This 3 day of August 2022