

**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 – David Butcher, Q.C.
Sergeant Brent Keleher –
Counsel for Commissioner – Christopher Considine, Q.C.
Dates of Hearing - September 15, 2022

DECISION ON DISPOSITION s. 126(1) (2) and (3)

INTRODUCTION

1. On May 16, 2022, Sgt. Keleher was found to have committed discreditable conduct pursuant to s. 77 (3)(h) of the *Police Act RSBC 1996*, c.36 ("Act"). This is a hearing pursuant to s. 126(1) and (2) of the *Act* to determine disciplinary or corrective measures in relation to the discreditable conduct.

THE CONDUCT

2. The conduct that gives rise to these proceedings took place on May 12, 2018, in the City of Vancouver. The evidence supporting the finding of discreditable conduct relates to a sexual act that took place between the complainant, N.O. and Sgt. Keleher. I will briefly review the circumstances. The decision relating to the finding of discreditable conduct was contained in comprehensive reasons that were filed on May 16, 2022, following a public hearing under s. 138 of the *Act*.

3. On May 12, 2018, Sgt. Keleher was in the company of a group of friends who came to Vancouver from Victoria in order to celebrate the impending marriage of Julian

Dunford. Coincidentally, N.O., also a resident of Victoria, was visiting Ms. Sarah McKay, a long time friend, who resided in South Surrey. Both Ms. N.O. and Sarah McKay knew Mr. Dunford and his friends. When Ms. N.O. and Ms. McKay learned that Mr. Dunford and his friends were in Vancouver, they arranged to meet in a bar in the City of Vancouver. Sgt. Keleher, a friend of Mr. Dunford, was in the group. He was off duty.

4. During the course of the evening, a large amount of alcohol was consumed by all the parties. After attending three establishments, the parties retreated to the Coast Hotel, where Sgt. Keleher had reserved a room for the night. There were two beds in the room. Mr. Dunford and Ms. McKay shared one bed. N.O. and Sgt. Keleher shared the other. Sexual acts took place between the complainant and Sgt. Keleher. They included Sgt. Keleher touching of N.O.'s breasts, arm, shoulder, with digital penetration of her vagina. Ms. N.O. testified that Sgt. Keleher also placed her hand on his penis. There was no sexual intercourse. She testified that she did not consent to any of the acts that took place. It is not in dispute that she was in an advanced state of intoxication. Sgt. Keleher testified that although she was in an advanced state of intoxication, she nevertheless consented to the sexual acts.

5. Based on her state of intoxication, I found that Ms. N.O. did not have the capacity to consent to any of the sexual activities and did not in fact consent. Although lacking in some of her details in testimony, she was a credible witness. As stated above, Sgt. Keleher's defence was that she consented and in any event, in the alternative, he argues that he had an honest but mistaken belief that she had consented to the sexual acts. That evidence was not credible. Moreover, at the very least, Sgt. Keleher was reckless in concluding she had consented to the activities that took place.

Police Act

6. S. 126 (1) of the *Act* sets out the available disciplinary or corrective measures. That section reads 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.

7. S. 126 (2) of the *Act* lists a number of aggravating and mitigating circumstances that must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct. The section reads as follows:

- a. the seriousness of the misconduct,
- b. the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- c. the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- d. the likelihood of future misconduct by the member,
- e. whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- f. the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
- g. the range of disciplinary or corrective measures taken in similar circumstances, and
- h. other aggravating or mitigating factors.

ANALYSIS

8. There is no doubt that the misconduct is serious. It involved a sexual assault upon a complainant who was obviously intoxicated and was clearly vulnerable. Moreover, her condition and vulnerability were obviously well known to Sgt. Keleher. As an experienced police officer, he ought to have recognized the same. Counsel for Sgt. Keleher has argued that since the Crown did not authorize criminal charges against Sgt. Keleher, he was presumed to be innocent of any crime. It is important to note that he is not charged with sexual assault. Rather, the allegation is that he committed an act of discreditable conduct, the circumstances which relate to unwanted sexual activity.

9. Public Hearing Counsel has argued that based on the seriousness of the discreditable conduct, the appropriate remedy is one of dismissal. In advancing that argument he relies on s. 126 (2)(a)(d). That is to say that the misconduct was serious and further, there is a likelihood of future misconduct. I agree that the conduct was serious, however, there is no evidence of the likelihood of future misconduct.

10. This is not a case that calls for dismissal. Sgt. Keleher is 42 years old. He was 38 years old when the incident took place. He has been a member of the Victoria Police Department for 19 years. He has been employed as an officer in various sections, including patrol, bike section, crime reduction section, the emergency response team, and the major crime unit. More recently, he has been appointed as the head of the financial crimes unit.

11. Sgt. Keleher received considerable support from both his colleagues within the Victoria Police Department and from the community. Chief Cst. Del Manak has stated that Sgt. Keleher is a hard working officer and a quality investigator. The Chief Constable. has stated that Sgt. Keleher has expressed a great deal of remorse for what has taken place. The Chief Constable is confident that the incident that gives rise to these proceedings will not be repeated. Cst. Kathi Brown has stated in a letter that she has known Sgt. Keleher for 19 years. She has attested to his high work ethic and tenacity as an investigator. She has stated that she has felt comfortable working with him. A similar letter of support comes from Detective Cst. Rachel Bourne, who states


that Sgt. Keleher is a hard working, motivated, reliable, level headed, and highly skilled police officer. As a supervisor, he's a strong leader and communicator and is respectful and considerate. She has also commented on Sgt. Keleher's positive relationship with his family. Inspector Conor King of the Victoria Police Department also attests to Sgt. Keleher's skills and competency as a police officer. As well, he makes reference to Sgt. Keleher's personal life as a dedicated father to two small boys. Perhaps the most compelling evidence that goes to mitigation is a letter from Dr. Sara Waters, who is Sgt. Keleher's sister-in-law. She is an anesthesiologist. She has known Sgt. Keleher since high school. She describes him as a gentleman, adventurer, and "a down right nice guy". Like other persons who have filed letters in support of Sgt. Keleher, she too states that the conduct appears to be out of character. Staff Sgt. Jeff Lawson, who has worked with Sgt. Keleher, also attests to the officers work ethic, investigative ability and intelligence. Sgt. Simon De Wit has filed a statement, wherein he states that Sgt. Keleher is known for his integrity, honesty, and ethics.

12. It is not in dispute that the misconduct in this case was serious in that it violated the personal integrity of Ms. N.O. However, there are a number of mitigating circumstances that militate towards a suspension rather than dismissal. Sgt. Keleher has no history of misconduct as a police officer. As stated above, he has been a senior officer who is respected, not only by his colleagues, but by many members of the community. An order of dismissal ought to be made only in the most serious of circumstances. In this case dismissal would clearly have an adverse effect on the officer's family and his career. He has shown remorse and has accepted responsibility for the misconduct. S. 126(3) states

"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."

13. It has long been held that in determining the appropriateness of a particular act of misconduct is remedial as apposed to punitive. It appears that the misconduct appears to be of an isolated nature.

14. Counsel for Sgt. Keleher has argued that this is a case for a lengthy suspension, I agree. An appropriate period of suspension having regard to the whole of the circumstances is 30 days. Under the *Act* a 30 day suspension is a maximum suspension allowed. It recognizes the serious nature of the misconduct and the aggravating factors but balances that against the mitigating circumstances. I am prepared to hear counsel as to the commencement date of the suspension.



The Honourable Wally Oppal, K.C.

This 5th day of October 2022