



Office of the
Police Complaint Commissioner

British Columbia, Canada

NOTICE OF REVIEW ON THE RECORD
Pursuant to section 137(2) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Registered Complaint against
Sergeant Ajmer Sandhu of the Vancouver Police Department**

OPCC File: 2018-14493
May 28, 2020

To: Complainant

And to: Sergeant Ajmer Sandhu, #1730 (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Chief Constable Les Sylven (retired) (Discipline Authority)
c/o Central Saanich Police Services
Professional Standards Section

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On March 1, 2018, the Office of the Police Complaint Commissioner (OPCC) received a copy of a complaint describing concerns with a member of the Vancouver Police Department (VPD) on February 15, 2018, which occurred while the complainant was acting as Crown Counsel during a criminal proceeding.
2. During this criminal proceeding, the Complainant advised that she had been cross-examining the accused earlier that day. During the afternoon break, the complainant reported walking back to court when a man stood in front of her, stared at her menacingly, and continued to follow her visually as she walked around him. The Complainant felt the man was acting in an aggressive and intimidating fashion. She and the man then exchanged

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words, which the Complainant could not recall other than telling him that his behaviour was unacceptable in a courthouse.

3. The Complainant provided a description of the male, who she later learned was an off-duty member of the VPD, and advised that he had been standing with a group of people associated with the accused, including the accused's uncle, who is a Sergeant with the VPD.
4. On March 1, 2018, after reviewing the information provided by the Complainant, the OPCC determined that the complaint filed against the male VPD member was admissible in accordance with section 82(2) of the *Police Act*.
5. On July 17, 2018, the Police Complaint Commissioner appointed the Royal Canadian Mounted Police (RCMP) to conduct an external *Police Act* investigation and designated Chief Constable Les Sylven of the Central Saanich Police Service as the Discipline Authority (DA). During the course of the investigation three allegations of *Deceit* were identified pertaining to VPD member Sergeant Ajmer Sandhu's involvement with the incident.
6. On May 17, 2019, in his decision pursuant to section 112 of the *Police Act* relating to Sergeant Sandhu, Chief Constable Sylven identified that the following allegations of misconduct appeared to be substantiated:

Allegation #1: *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by knowingly making a statement that is false or misleading. Specifically, in Sergeant Sandhu's VPD Duty Report dated April 5, 2018, when describing [the VPD member's] interaction with [the complainant] in the court hallway.

Allegation #2: *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by knowingly making a statement that is false or misleading. Specifically, during Sergeant Sandhu's interview with [the investigator] on September 12, 2018, when describing [the VPD member's] interaction with [the complainant] in the court hallway, or his interactions with BC Sheriffs or [Defence Counsel] following the removal of [the VPD member] from the courthouse.

Allegation #3: *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by knowingly making a statement that is false or misleading. Specifically, during Sergeant Sandhu's interview with [the investigators] on October 16, 2018, when describing [the VPD member's] interaction with [the complainant] in the court hallway, or his interactions with BC Sheriffs or [Defence Counsel] following the removal of [the VPD member] from the courthouse.

Discipline Proceeding and Proposed Discipline

7. On March 13, 2020, following the discipline proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determinations in relation to the allegations facing Sergeant Sandhu:

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Allegation #1: *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*.

Finding: Substantiated

Proposed Disciplinary Measure – Reduction in Rank to First Class Constable (permitted to compete for promotion after five months).

Allegation #2: *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*.

Finding: Substantiated

Proposed Disciplinary Measure – Reduction in Rank to First Class Constable (permitted to compete for promotion after five months).

Allegation #3: *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*.

Finding: Substantiated

Proposed Disciplinary Measure – Reduction in Rank to First Class Constable (permitted to compete for promotion after five months).

Sergeant Sandhu's request for a Public Hearing

8. Sergeant Sandhu was provided copies of Chief Constable Sylven's findings in relation to the allegations of misconduct and determinations on appropriate disciplinary and/or corrective measures at the discipline proceeding. Sergeant Sandhu 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.
9. On April 16, 2020, the Commissioner received a request for a Public Hearing from Sergeant Sandhu pursuant to section 137(1) of the *Police Act*.
10. Sergeant Sandhu's asserted that his evidence was rejected by the Discipline Authority despite the evidence being "straightforward, articulate and had the ring of truth." Sergeant Sandhu further argued that conflicts in evidence between witnesses were not adequately resolved by the Discipline Authority. Sergeant Sandhu expressed the view that the Discipline Authority found that the civilian witnesses were biased in favor of the police officers. Additionally, Sergeant Sandhu cites concerns that potential exculpatory evidence from the courthouse Sheriffs was not properly considered.
11. 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 a Review on the Record. I have taken the time to carefully consider the matter given the detailed request submitted by Sergeant Sandhu.
12. In addition, I have taken the time to carefully consider the record of proceedings in the matter.

Decision

13. Pursuant to section 137(2) of the *Police Act*, the Commissioner may arrange a Review on the Record under section 141 instead of a Public Hearing if the Commissioner is satisfied, in the circumstances, that it is unnecessary to do either of the following: examine or cross-examine witnesses; receive evidence that is not part of the record of the disciplinary decision described in section 141(3) or the service record of the member or former member, and; a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
14. In this matter the investigative record is thorough and complete. As noted above, the *Police Act* investigation was conducted by an external investigative agency. The initial Final Investigation Report was based on investigative steps related to one allegation of misconduct. However, the Discipline Authority sent the Final Investigation Report for further investigation due to the addition of further allegations of misconduct, including *Deceit*.
15. The member submitted a written statement regarding his involvement as well as participated in three audio-recorded and transcribed interviews. All material witnesses to the interaction at the courthouse were interviewed with follow-up interviews where required. The complainant participated in an interview, as did a witness, who was in her presence at the time of the interaction at issue. Courthouse video footage (without audio) was obtained, which depicts the interaction in question between the complainant and the VPD member in the courthouse hallway with Sergeant Sandhu and other witnesses present. While not direct witnesses to the interaction, five courthouse Sheriffs provided interviews regarding their involvement and observations.
16. The member, who was represented by legal counsel, did not request any further investigation following the submission of the Final Investigation Report, as was his right, nor did the member request the attendance of any witnesses at the discipline proceeding, as was also his right. The member also provided oral evidence at the discipline proceeding under direct examination by counsel and answered questions from the Discipline Authority. Prior to the conclusion of the discipline proceeding, the member made written submissions to the Discipline Authority outlining the relevant law, a reliability and credibility assessment, as well as aspects of Sergeant Sandhu's and other witness evidence.
17. Sergeant Sandhu raises his reasons, as outlined above, in support of the request for a Public Hearing. To the extent that the basis for the request is the member's disagreement with the Discipline Authority's factual findings and legal determinations, cross-examination of witnesses is not necessary to resolve those issues.
18. The adjudicator in a Review on the Record will make her own determination and weigh the evidence independently of the Discipline Authority to come to her own conclusions. Any errors made by the Discipline Authority may therefore be resolved by the adjudicator in this Review on the Record. Merely because conflicting evidence on an issue may make it difficult

to resolve does not in itself require a Public Hearing where the record is sufficiently clear as it is in this case.

19. In my view, cross-examination is not necessary in this matter as the adjudicator may independently weigh all the available evidence and it is possible for conflicts in the witness accounts to be resolved by consideration of inherent believability of the witnesses' statements, the consistency of the statements with the other witnesses and consistency with the video and any documentary evidence.
20. In light of the thorough and complete external investigation, the available material evidence and the documentation of the comprehensive discipline proceeding, I am of the view that the record of disciplinary decision is good and sufficient such that a Review on the Record is appropriate in all of the circumstances.
21. I have therefore determined that a Public Hearing is not necessary or required in this particular matter. While I acknowledge the member takes issue with the interpretation of the evidence by the Discipline Authority, a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
22. Accordingly, pursuant to sections 137(2) and 141 of the *Police Act*, I am arranging a Review on the Record.
23. 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.
24. Pursuant to section 141(5) of the *Police Act*, Sergeant Sandhu, or his agent or legal counsel, may make submissions concerning the matters under review.
25. 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.
26. Pursuant to section 141(7)(a) and (b) of the *Police Act*, the Adjudicator may permit the complainant, or agent or legal counsel, and the Discipline Authority to make submissions concerning the matters under review.
27. It is alleged that Sergeant Sandhu committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
 - i. **Allegation #1:** *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by knowingly making a statement that is false or misleading. Specifically, in his VPD Duty Report

dated April 5, 2018, when describing [the VPD member's] interaction with [the complainant] in the court hallway.

- ii. **Allegation #2:** *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by knowingly making a statement that is false or misleading. Specifically, during his interview with [the investigator] on September 12, 2018, when describing [the VPD member's] interaction with [the complainant] in the court hallway, or his interactions with BC Sheriffs or [Defence Counsel] following the removal of [the VPD member] from the courthouse.
- iii. **Allegation #3:** *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by knowingly making a statement that is false or misleading. Specifically, during his interview with [the investigators] on October 16, 2018, when describing [the VPD member's] interaction with [the complainant] in the court hallway, or his interactions with BC Sheriffs or [Defence Counsel] following the removal of [the VPD member] from the courthouse.

THEREFORE:

28. A Review on the Record is arranged pursuant to sections 137(2) and 141 of the *Police Act*.

29. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honorable Carol Baird Ellan Retired Provincial 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 28th day of May, 2020.



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