

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

**IN THE MATTER OF THE REVIEW ON THE RECORD INTO THE REGISTERED
COMPLAINT AGAINST SERGEANT AJMER SANDHU OF THE VANCOUVER
POLICE DEPARTMENT**

**ADJUDICATOR'S REASONS ON
ADJOURNMENT OF REVIEW ON THE RECORD**

To: Complainant (Ban on Publication)

And to: Mr. Eric Gottardi (Counsel for the 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

And to: Mr. Clayton Pecknold (Police Complaint Commissioner)

And to: Mr. Mark Underhill (Commission Counsel)

And to: Mr. Mike Shirreff (Counsel for Sgt. Sandhu)

There is a Ban on Publication of the Identity of the Complainant in this Proceeding

[1] These are my reasons pertaining to the adjournment of a date set for oral submissions in this matter on October 20, 2020. The matter is a Review on the Record pursuant to Section 137(2) of the *Police Act*. The Notice of Review on the Record was issued by the Police Complaint Commissioner on May 28, 2020. It pertains to incidents that arose in early 2018,

which initially gave rise to a Police Act investigation of another Vancouver Police Department member. Arising out of that investigation, the Discipline Authority identified allegations of misconduct against Sgt. Sandhu. Those culminated in a decision by the Discipline Authority pursuant to Section 125 on March 13, 2020.

[2] The allegations that are the subject of the review are as follows:

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.
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.
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.

[3] The record of materials on the matter came to me from the Office of the Police Complaint Commissioner on June 6, 2020. I made fairly immediate inquiries as to whether the Discipline Authority or the complainant intended to make submissions under Section 141(7), and received a response from counsel for the complainant on June 15, 2020 suggesting a case management conference to discuss matters relating to maintaining confidentiality of the complainant's name.

[4] A case management teleconference was arranged for June 24, 2020, but on the day before that, (prior) counsel for the member advised of their intention to withdraw due to a conflict. Present counsel for the member was identified at that time, but was unable to attend the teleconference. It was adjourned to July 10, 2020, and then to July 23, 2020, primarily to afford Member's Counsel time to receive and review the file. Up to this point, and throughout the

relevant period discussed in these reasons, communications on the file were by email through the OPCC email account and at teleconferences, or in one case a videoconference, on the record. At all junctures, the complainant's desire for confidentiality, which was the primary if not sole purpose of Counsel for the Complainant's retainer, was expressly discussed.

[5] At the teleconference on July 23, 2020, I made a formal ban on publication of the complainant's name, and set a timeline for the filing of written submissions. Those were to commence with Member's Counsel on September 4, followed by Commission Counsel on September 23, Member's Counsel's Reply on September 30, and a final date for the hearing of oral submissions on October 20, 2020.

[6] On September 3, 2020, Member's Counsel sent a letter via email advising that he and Commission Counsel were discussing an issue that would impact the schedule for submissions, and that he would provide an update very soon.

[7] On October 2, 2020, Member's Counsel sent a letter indicating that he intended to apply to BC Supreme Court for judicial review of the Commissioner's Notice of Review on the Record, and would seek a stay of the Review on the Record pending the outcome of that application. He again observed that these developments would impact the schedule set for the filing of submissions. In fact, all of the dates for filing of submissions had come and gone without further comment by any counsel or any application to adjourn the Review on the Record.

[8] Commission Counsel responded to Member's Counsel's October 2 letter on October 5, 2020, advising that the Commissioner would oppose the stay. He took the position that the Review on the Record should proceed unless and until the Supreme Court granted a stay.

[9] I sent an email to counsel on October 6, 2020 advising that I wished to set a case management teleconference to discuss how matters would proceed on the hearing date of October 20, in the absence of written submissions. I noted that no application to adjourn the Review on the Record had yet been made or granted.

[10] A case management teleconference was convened on October 14, 2020. In the absence of an application to adjourn the Review on the Record, October 20 was confirmed for the hearing of oral submissions on the Review, via video conference.

[11] On October 16, 2020, Member's Counsel filed an application for an adjournment of the Review on the Record. He included in that application a copy of his Petition filed in the Supreme Court on October 16. He also provided an affidavit in support of the adjournment application in

which the complainant's name was not redacted. Counsel for the Complainant responded with a letter requesting that the complainant's name be redacted. I asked Member's Counsel to ensure that the materials on his application to adjourn were refiled with appropriate redactions to align with the ban on publication in the Review on the Record.

[12] The gist of Member's Counsel's submission on the adjournment request was that, given that the Petition had now been filed, fairness to the member and expedience dictated that the Review on the Record await the outcome of the judicial review proceeding. He requested that a hearing date be set for January 2021, which would give time for the judicial review proceeding, or at least the stay application, to be determined. He placed some reliance on the fact that he and Commission Counsel had been discussing the best manner of proceeding in light of the fact that the issues Member's Counsel had raised related to a jurisdictional matter that was likely outside my authority to determine on the Review on the Record. Fairly late in the day, as I understand Member's Counsel's submissions, Commission Counsel advised him of the Commissioner's view that the matter needed to go to Supreme Court. At that stage, there was not sufficient time for Member's Counsel to obtain a stay of proceedings before the dates set for the conduct of the Review. In fact it appears that communication took place in mid-September, after the date for Member's Counsel submissions had passed. They continued their discussions, and Member's Counsel determined by late September that he would make an application for judicial review.

[13] On October 19, 2020, Commission Counsel sent a letter to the parties on the Review on the Record via email opposing Member's Counsel's request for an adjournment to January 2021, and urging that a new date be set no later than November 27, 2020.

[14] The Review on the Record proceeded by videoconference on October 20 as scheduled; however, it was a *fait accompli* that counsel would not be making oral submissions, as they had not prepared them and had already started down the path of finding new dates. There was discussion about the likely timing of the Supreme Court hearing and decision in relation to the stay application, which had not yet been filed, and it was suggested that the result might be known within a few weeks. During this discussion, which was on the record, the complainant's name was mentioned. I ordered that it be redacted if a transcript were ordered. I have since confirmed that the OPCC file in this matter now reflects the fact that there is a ban on publication.

[15] In relation to the matter of adjournment, it is my view that an expressed intention to take a judicial review proceeding is not enough, and it may be that until a stay is granted by a superior court, an adjudicator has no basis on which to depart from the clear wording of Section 142(3), to “set the earliest practicable date” for the Review on the Record. Having said that, if in fact a judicial review proceeding is filed in relation to a Review on the Record, and it includes an application for a stay, it would seem counterproductive to require counsel to be working on submissions for both forums at the same time if the outcome of the stay application is imminent. This is true particularly in a case where the outcome of the judicial review might be that the adjudicator on the Review is found to be without jurisdiction, or that the allegations are declared a nullity. In the absence of a stay of proceedings, of course, the Review on the Record would need to proceed expeditiously as required by the *Act*, but at the stage of the proceedings as of October 20, I considered a brief delay to await the outcome of the stay application a reasonable (and apparently inevitable) course of action.

[16] Accordingly, at the October 20, 2020 hearing date I set new dates for written submissions on the Review, on the understanding that the stay application would be filed within a short period of time. I set Member’s Counsel’s written submissions for November 20, Commission Counsel’s for November 27, and Reply on December 4. Oral submissions are set for December 14 via videoconference. A further case management teleconference is set for November 10, for the purpose of an update regarding the progress of the stay application.

[17] On October 30, 2020, Commission Counsel provided me with a copy of his correspondence with Member’s Counsel relating to the Petition and the stay application. The latter had been filed on October 29. Commission Counsel noted again that the complainant’s name was not redacted from the affidavits that Member’s Counsel had filed, or intended to file (it is not clear which) in the Supreme Court. In any event, copies of those materials were not provided to me with that correspondence.

[18] On November 4, 2020, Member’s Counsel provided me with copies of the stay application and the affidavits that accompanied it. It appears that the complainant’s name has been properly redacted from those materials and they may be retained on the file in this matter. Receipt of those materials prompted me to follow up on the redacted copy of the affidavit accompanying the October 16 adjournment application, which was consequently delivered to me by email on November 4.

[19] In addition, on November 4, 2020, Member's Counsel provided me with a copy of the filed Petition and related but unfiled affidavits, which he noted were as yet unredacted pending counsel's determination of the extent of redaction that would be required. He advised that the date of November 13 had been set for the hearing of the stay application.

[20] The matter of the record on an OPCC Review on the Record is a tricky thing, in these electronic times. There are now in the emails on this matter a number of materials containing the complainant's name, or information which could identify the complainant, that could conceivably be subject to a public request for access of one kind or another at some point. I will accordingly ask counsel to be prepared to address the issue of rectifying the state of the record at the next teleconference, on November 10, 2020.

Delivered at Sechelt, British Columbia, this 5th day of November, 2020.

A handwritten signature in black ink, appearing to read 'C. Baird Ellan', with a stylized flourish at the end.

Carol Baird Ellan
Retired Judge, Adjudicator