



Office of the
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2021-19733

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
Sergeant Brian Gateley of the Organized Crime Agency of British Columbia**

To: Sergeant Brian Gateley (#9982) (Member)
Organized Crime Agency of British Columbia
c/o Combined Forces Special Enforcement Unit - British Columbia
Professional Standards Section

And to: Superintendent Don Chapman (External Investigative Agency
c/o Vancouver Police Department and External Discipline Authority)
Professional Standards Section

And to: Assistant Commissioner Manny Mann
c/o Combined Forces Special Enforcement Unit - British Columbia
Professional Standards Section

WHEREAS:

Investigation

1. On May 27, 2021, the Office of the Police Complaint Commissioner (OPCC) received a Request for an Ordered Investigation from the Combined Forces Special Enforcement Unit - British Columbia (CFSEU-BC) in relation to an incident that was reported in the media on May 22, 2021.
2. According to the CFSEU-BC, Sergeant Brian Gateley's supervisors met with him in December 2020. During that meeting, Sergeant Gateley was advised not to have contact with any witnesses from a specific investigation into the death of a female person which was under the conduct of another agency. It was alleged that in February 2021 Sergeant Gateley communicated by way of letter to the sister of the deceased, who was a witness in the investigation.

Clayton Pecknold
Police Complaint Commissioner

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3. On June 8, 2021, after reviewing the information forwarded by the CFSEU-BC, I issued an order for investigation and determined that it was necessary in the public interest that the alleged misconduct be investigated by an external police force, pursuant to section 93(b)(ii) of the Act. Accordingly, the Vancouver Police Department (VPD) was appointed as the external investigative agency.
4. I also determined that, pursuant to section 135(1) of the Act, it was necessary in the public interest to designate Chief Constable Adam Palmer of the VPD to exercise the powers and duties of the Discipline Authority for the purposes of all provisions under Division 3.
5. The VPD Professional Standards investigator, Sergeant Jen Daniel, conducted an investigation into the matter and on December 8, 2021, she submitted the Final Investigation Report (FIR) to the Discipline Authority.
6. On December 22, 2021, following his review of the FIR, Inspector Mike Ritchie, as the Discipline Authority, found that the misconduct of *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act, appeared to be substantiated.
7. A Prehearing Conference was convened before Inspector Ritchie on January 26, 2022.
8. On February 3, 2022, I rejected the Prehearing Conference agreement. Accordingly, the matter proceeded to a Discipline Proceeding before Superintendent Don Chapman as the new Discipline Authority.

Discipline Proceeding and Proposed Discipline

9. On April 21, 2022, following the Discipline Proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determination in relation to the allegation:
 - (i) That Sergeant Gateley committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* when he communicated with a witness in a homicide investigation in contravention of the direct orders of superior officers and supervisors.

Proposed Disciplinary Measure – *one-day suspension without pay*

10. In arriving at the proposed discipline, the Discipline Authority found that Sergeant Gateley’s conduct was “significant” and that he knowingly disobeyed directions from his supervisors and senior officers. The Discipline Authority noted that Sergeant Gateley was a 34-year police veteran, previously having been employed by the Royal Canadian Mounted Police, and had “minimized his role” in the alleged misconduct by repeatedly asserting that he had never disobeyed directions given to him.

Request for Public Hearing or Review on the Record

11. Sergeant Gateley was provided a copy of the Discipline Authority's findings in relation to the allegation of misconduct and determination on appropriate disciplinary or corrective measures at the Discipline Proceeding. Sergeant Gateley 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. No request for a Public Hearing or a Review on the Record was received from Sergeant Gateley.

Decision

12. Pursuant to section 138(1) of the Act, the Commissioner must arrange a Public Hearing or a 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 a Review on the Record is necessary in the public interest.
13. I have reviewed the record of the disciplinary decision, the associated determinations pursuant to section 138 of the Act, and 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 is incorrect pursuant to section 125(1) of the Act.
14. However, I have 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 actions of Sergeant Gateley are serious. The conduct occurred in the context of a significant investigation under the conduct of another police agency through inappropriate communication, containing representations and references of material facts, with the relative of a deceased person in direct contradiction to the express direction of his superiors.
 - b) Sergeant Gateley is an experienced police officer who clearly understood the potential detrimental consequences of contacting material witnesses in matters of which he had no role as a police officer.
 - c) The disciplinary or corrective measure proposed is inappropriate or inadequate as it does not sufficiently address the seriousness and the circumstances of the misconduct.
 - d) The low level of disciplinary and corrective measures proposed by the Discipline Authority are not proportionate to the seriousness of the misconduct in all the circumstances, including the planned and premeditated decision to ignore the directions of his supervisors in the context of his experience and the serious circumstances of the matter.

15. I have further determined that a Public Hearing is not necessary in this particular matter. I note that Sergeant Gateley called no evidence at the Discipline Proceeding and accepted the facts and findings contained in the Discipline Authority's decision pursuant to section 112 of the Act. I am therefore satisfied that it is not necessary to examine witnesses or receive new evidence. 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 sufficient.
16. Accordingly, pursuant to section 141 of the Act, I am arranging a Review on the Record. The Review on the Record will be confined to the issue of adequacy and appropriateness of the disciplinary or corrective measures.
17. 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.
18. Pursuant to section 141(5) of the Act, Sergeant Gateley, or his agent or legal counsel, may make submissions concerning the matters under review.
19. Pursuant to section 141(6) of the Act, the Commissioner or his commission counsel may make submissions concerning the matters under review.
20. Pursuant to section 141(7)(b) of the Act, the Adjudicator may permit the Discipline Authority to make submissions concerning the matters under review.
21. It is therefore alleged that Sergeant Gateley committed the following disciplinary default, pursuant to section 77 of the Act:
 - (i) *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, which is in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on any person. Specifically, Sergeant Gateley communicating with a witness in a homicide investigation in contravention of the direct orders from his superior officers and supervisors.

THEREFORE:

22. A Review on the Record is arranged pursuant to section 141 of the Act.
23. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Judge James Threlfall, retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the 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 30th day of June, 2022.



Clayton Pecknold
Police Complaint Commissioner