

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

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST  
Special Municipal Constable F. Martin of the Victoria Police Department  
Pursuant to section 141 of the *Police Act*

TO: SMC Martin (“SMC Martin”)  
c/o Representative Sgt. L. Hollingsworth  
 (“ the Member’s Representative”)  
both of Victoria Police Department (“VPD”)

AND TO: M. Underhill, K.C. and E. Ronsley,  
Jointly, Counsel to the Commissioner (“Counsel”)

AND TO: Inspector C. Brown, Former Discipline Authority, (“Insp. Brown”)  
Professional Standards Department, VPD

AND TO: Mr. Clayton Pecknold  
Police Complaint Commissioner (the “Commissioner”)

### **Decision on Supplemental Evidence**

1. This is a Review on the Record taking place under the authority of section 141 of the *Police Act*.
2. In accordance with the terms of an agreed schedule, written submissions have been received from Counsel on behalf of the Commissioner. The submissions of SMC Martin are to be delivered by the Member’s Representative June 16, 2023 with a hearing scheduled to commence June 26<sup>th</sup> 2023 in Victoria.
3. As part of the required process under section 141 (7) of the *Police Act*, Insp. Brown was offered the opportunity to make submissions in his capacity as the former Discipline Authority in relation to the allegations of misconduct relevant to SMC Martin.

4. On May 5<sup>th</sup>, 2023 the Office of the Police Complaint Commissioner forwarded on a copy of a note received from Insp. Brown. In that note Insp. Brown declined the opportunity to make submissions on the decision he had taken pursuant to section 125 of the *Police Act* as the former Discipline Authority. However, Insp. Brown went on to advise as follows:

*“On a “without prejudice” basis to Mr. Martin, I can advise Adjudicator Neal that subsequent to my s. 125 decision, I became privy to information in my capacity as the VicPD Inspector in charge of Professional Standards that now causes me to have concerns about Mr. Martin's credibility generally. I am at a loss on how to appropriately deal with this or whether it is even appropriate to share my concerns with Adjudicator Neal. “*

5. No further details were provided by Insp. Brown.
6. The dilemma set out by Insp. Brown is not a matter specifically addressed in the *Police Act*. Section 141(4) appears to have some relevance on the issue of additional evidence, however, the statutory requirements are strict:

*(4)Despite subsections (2) and (3) of this section and section 137 (2) (a) [circumstance when member or former member concerned is entitled to public hearing], if the adjudicator considers that there are special circumstances and it is necessary and appropriate to do so, the adjudicator may receive evidence that is not part of either of the following:*

*(a)the record of the disciplinary decision concerned;*

*(b)the service record of the member or former member concerned.*

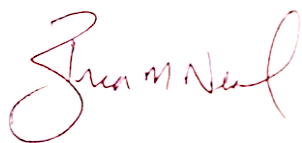
7. The full note from Insp. Brown was forwarded to Counsel and the Member's Representative on May 5<sup>th</sup>, 2023. The parties were asked to provide me with their position on the note from the Inspector on or before May 12, 2023.
8. On May 10, 2023 a response was received from Counsel as follows:

*“We write with respect to the May 5, 2023 correspondence from Inspector Brown regarding the additional information which has apparently come to his attention since his s. 125 decision. As you are aware, an adjudicator may receive new evidence in a review on the record pursuant to s. 141(4) of the Police Act if “there are special circumstances and it is necessary and appropriate to do so”. In this case, the Commissioner is unable to address the test set out in s. 141(4) without knowing the nature of the potential new evidence. The Commissioner therefore proposes that Insp. Brown disclose the information to the Commissioner through our office on a confidential basis. We would then be in a position to determine whether or not the evidence should be disclosed to SMC Martin, and considered for admission pursuant to s. 141(4), and in turn provide the appropriate submissions.”*

9. On May 12, 2023 the following response was provided by the Member's Representative:

*"We are opposed to the Discipline Authority considering Insp. Brown's correspondence. We cannot see how it could be received or considered under the Police Act. Additionally, it is our position that it was inappropriate for Insp. Brown to have shared unsolicited credibility concerns with the Discipline Authority, as vague and unhelpful as they may be. These concerns shared by Insp. Brown are in contradiction to the presumption of innocence. Insp. Brown's concerns are not compelling in the manner of it being similar fact evidence to the "SnapChat" allegation. The issues raised by Insp. Brown are not relevant as they do not meet the test of 'special' or 'necessary' or 'appropriate' and as stated above his correspondence is inappropriate. As Discipline Authority, of course it is only you who are tasked with assessing SMC Martin's credibility on the written record and verbal submissions that will be presented before you. We have every confidence that you will undertake your task carefully and skilfully."*

10. I have considered the responses from the parties and determined that the material from Insp. Brown does not constitute a "special circumstance" within the meaning of section 141(4) of the *Police Act* warranting the consideration of possible additional evidence. The limited supplemental information provided is simply too general and vague to establish a "special circumstance".
11. Nor do I find that it would it be fair to SMC Martin for the limited supplemental information provided by Insp. Brown to be considered in the context on the current Review proceedings. I will, therefore, not consider Insp. Brown's supplemental information as I continue with the Review process.
12. Section 141(3) of the *Police Act* is clear that a Review on the Record may only consider the records described in that section. As Adjudicator in these proceedings, it is not my role to investigate, or facilitate the further investigation, of matters relating to SMC Martin or his possible misconduct.
13. In the absence of compelling new factual information on an issue material to this review, I have no statutory authority to consider a section 141(4) decision.
14. I have also concluded that I do not have the authority to adopt the option proposed by Counsel in facilitating disclosure to the OPCC by the Inspector. I find that such a proposal would require me to assume a role beyond my jurisdiction, and statutory authority.



Brian M. Neal KC (rt)  
Discipline Authority  
May 12, 2023

