

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 or the Member”)
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: 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 26th 2023 in Victoria.
3. On May 29, 2023 an application was received from the Member’s Representative for further investigation of certain information concerning the Deceit allegation of misconduct relating to the Member and the introduction of new evidence.

4. The application seeking new evidence states that:

“We believe that this evidence will corroborate SMC Martin’s statements during his interview that is the basis of the Deceit allegation. SMC Martin was able to locate a screenshot within the SnapChat App that he believes is related to this matter.”

5. The application further notes that the Member would like to provide the image to the Investigator so that it may be verified and, as well, allow the Investigator to:

“Interview the relevant witnesses to determine if it is an accurate representation of what SMC Martin sent to them via the SnapChat app.”

6. Section 141(4) of the Police Act is relevant 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;

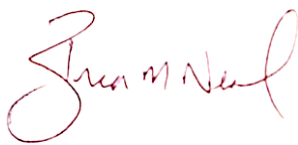
(b)the service record of the member or former member concerned

7. The application was forwarded to Counsel on May 29th, 2023. Counsel was asked to provide me with their position on the application on or before June 2, 2023.

8. On June 2, 2023 a response was received from Counsel. In summary Counsel opposes the application for the following reasons:

- (a) Contrary to the assertion in the Member’s application, Counsel denies expressing support for any such matter;
- (b) It is submitted that the application does not relate to the misconduct allegations concerning Discreditable Conduct, but rather Deceit;
- (c) Counsel submits that the Member misconstrued the findings at the Discipline Proceeding noting that the allegation of Deceit was substantiated under section 112 of the Police Act; and
- (d) Counsel further submits that the current application is a request for further investigation into facts which the Member has already admitted.

9. I have considered the position of the parties and determined that the material from the Member's Representative 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 supplemental information sought touches on matters collateral to the subject of this Review.
10. Furthermore I find that there is no "special circumstance " created where, after a lengthy investigation and subsequent Discipline Proceeding both involving the Member, the Member appears to have now recalled further possible additional facts, in the context of the record under review.
11. Section 141(3) of the *Police Act* is clear that, subject to subsection 141(4), 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. This is not a Public Hearing adducing fresh evidence. It is a review of earlier proceedings.
12. Considering the submissions before me, I find that the Member's application does not establish "special circumstances " warranting new evidence, nor do I find that the application raises any reason to believe that a further investigation, as requested, is necessary or appropriate, given the content of the record under review.
13. I therefore find that I have no statutory authority to approve the Member's section 141(4) application.
14. The application is denied.



Brian M. Neal KC (rt)
Discipline Authority
June 3, 2023