OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

REASONS FOR DECISION – STANLEY PARK INCIDENT PUBLIC HEARING

Background:

On 24 January 2003 the Vancouver Police Department (VPD) advised the Office of the Police Complaint Commissioner (OPCC) of an allegation that on 14 January 2003, three prisoners were transported by police wagon to a parking lot in Stanley Park. According to the Police Constable who reported the incident, each of the three prisoners in turn were removed from the wagon, berated, threatened, assaulted and then released from custody. In light of the allegations, the VPD requested that the OPCC declare a Public Trust investigation be launched immediately.

On 24 January 2003, Acting Police Complaint Commissioner Ben Casson, Q.C. issued an Order for Investigation pursuant to s.55(3) of the Police Act and characterized the complaint as "Public Trust", naming six respondents: PC Duncan GEMMELL; PC Jim KENNY; PC Gabriel KOJIMA; PC Raymond GARDNER; PC Chris CHRONMILLER and PC Brandon STEELE. These officers were subsequently suspended with pay by the VPD.

On 31 January 2003, the VPD Internal Investigation Section concluded its report to Crown Counsel recommending charges of Unlawful confinement and Assault against all six officers, and the additional counts of Assault with a Weapon and Threatening against Cst. KOJIMA and a charge of Threatening against Cst. GARDNER.

The Report to Crown Counsel (RCC) named the three victims of the alleged assault and also named a female witness to the arrest of the three male victims. The RCC also reported that some of the officers had arrested four individuals at approximately 5 am in the 1100 block of Granville Street and the decision was made to "breach them out of the area" to a location in Stanley Park. All four victims were removed from the area, and the female witness was dropped off near Denman and Davie Street. The three males were then taken to the Third

Beach area of Stanley Park. All six officers named as respondents attended the scene of the assault, along with a recruit police officer who at the time of the incident was being field trained by Cst. KENNY, who that night was the Acting Sergeant supervising the other officers.

On 6 February 2003 the OPCC office received complaints under the Police Act by two of the assault victims, LAWRIE and WILSON, through their lawyer, Phil RANKIN.

On 13 February 2003, I was sworn in as the new Police Complaint Commissioner.

On 23 March 2003 the media reported that the Ministry of the Attorney General Criminal Justice Branch had named a Sr. Vancouver criminal lawyer, Robert Gourlay Q.C., as a special prosecutor to handle the approval of charges and have conduct of the criminal case. The media also reported that all six officers had been charged with three counts of assault, one count of assault with a weapon, and one count of attempting to obstruct justice. The charges of attempting to obstruct justice were apparently based on the filing of a misleading General Occurrence Report and attempting to dissuade the officers from disclosing the assaults upon the victims.

On 1 May 2003, Mr. RANKIN lodged Police Act complaints with the OPCC on behalf of the two remaining individuals who had been arrested, DESJARDINS and PRITCHARD.

On 12 June 2003 I received a request from the VPD for a suspension of Police Act proceedings pending conclusion of the criminal matter scheduled for trial on 21 June 2004. I granted that request on 16 June 2003.

Nevertheless, on 2 July 2003, VPD advised our office that Chief Graham as the discipline authority was preparing to proceed with a disciplinary hearing notwithstanding the outcome of the pending criminal proceedings. On the same date, the OPCC received a *Notice of Decision RE: Disciplinary or Corrective Measures* to the effect that each of the Respondent officers were alleged to have committed the disciplinary default of Abuse of Authority against all three victims with Dismissal as the recommended discipline to be imposed against all six. All six were also cited to have committed Discreditable Conduct with Dismissal as the recommended discipline. Finally, Cst. Gemmell was alleged to have committed the disciplinary default of Deceit by having authored a false and misleading General Occurrence Report, with the resultant recommended discipline of Dismissal.

After a series of adjournments of the discipline hearings originally scheduled for 27 October 2003, the matter was finally re-scheduled for 16 & 17 January 2004.

The Criminal Proceedings before Judge H. Weitzel:

In the interim, on 25 November 2003, all six respondent officers each plead guilty to three counts of common assault before His Honour Judge H. Weitzel, with the balance of the charges having been stayed by the Crown. Judge Weitzel was asked to base his decision on sentence on a Statement of Agreed Facts. That document outlined the facts that the Respondents agreed to and were accepted by the Crown as the basis upon which the learned trial Judge was to pass sentence.

After sentencing submissions were heard during December 2003, Judge Weitzel handed down his sentences on 5 January 2004. Characterizing the incident as a "sordid affair" and describing the conduct of the officers as "mob mentality" deserving of criminal sanctions, he rejected submissions for conditional discharges for most of the officers. He sentenced the officers as follows:

- · Duncan Gemmell received 60 days conditional house arrest and 6 months probation.
- · Gabriel Kojima received 30 days conditional house arrest and 6 months probation.
- · Raymond Gardner received a suspended sentence with nine months probation and 50 hours of community service.
- · Brandon Steele received a suspended sentence and 6 months probation.
- · Chris Cronmiller received a conditional discharge with 6 months probation and 30 hours of community service.
- · James Kenney received an absolute discharge without conditions.

In passing sentence, Judge Weitzel noted that this was not a spontaneous event with excessive force being applied in the heat of the moment. He made a number of significant observations concerning the behaviour of these officers, one of which was:

> *"There was time for reflection during the trip from Granville Mall to the deserted park. And the violence, once it began, escalated as the men were released one by one from the police wagon".* He added: *"Also troubling was the subsequent cover-up which included a falsified report".*

Two of the officers, Cst. Gemmell and Cst. Kojima, filed their notices of intention to appeal their sentences, but subsequently abandoned their appeals.

The Disciplinary Hearings before Chief Graham:

On 15 January 2004, Chief Jamie Graham of the VPD convened the discipline hearings for all the officers. All respondent officers admitted having committed the disciplinary default of Abuse of Authority for the each of the assaults upon Lawrie, Wilson and Desjardins. Each of the respondents also admitted to having committed the disciplinary default of Discreditable Conduct for their overall conduct, including the oppressive and abusive treatment of the complainants, and their conduct after the incident. Additionally, Constable Gemmel admitted having committed the disciplinary default of Deceit for filing a false and misleading General Occurrence Report.

Thereafter, over the course of two days, January 15th and 16th, Chief Graham heard submissions by counsel on behalf of each of the Respondent officers. On 28 January 2004, Chief Graham rendered his decision as the Discipline Authority.

Chief Graham gave detailed reasons for his decisions, making distinctions in the level of culpability of each of the Respondents based on the facts as he found them:

1. 1. **Cst. Gemmell**: Citing *inter alia* “deliberate acts of aggression aimed at persons in his care” and “a deceitful course of action by being the author of a false and misleading police report” Chief Graham concluded that “the totality of Cst. Gemmell’s behaviour must be dealt with so as to send a message to all that there can be no justification for this type of conduct”. In addition to other sanctions imposed for disciplinary defaults found to have been committed by Cst. Gemmell, he proposed that Cst. Gemmell be dismissed.

2. 2. **Cst. Kojima**: Chief Graham reviewed the reasons for sentencing of Judge Weitzel, noting that Kojima was the only one that had physical contact with the three complainants, and that his actions were at the “higher level of wrongful conduct, compared with that of most of the other officers”. Citing the illegal and improper use of the police baton and the bragging to Cst. Peters afterwards that what he had just witnessed was “What he signed up for”, Chief Graham proposed that Cst. Kojima also be dismissed.

3. **3. Cst. Cronmiller:** Noting that Cst. Cronmiller was an extremely junior member whose involvement in this matter was in effect, lesser than the others, Chief Graham concluded that this officer deserved a second chance. He took a number of mitigating factors into consideration and ultimately proposed a five day suspension without pay on each of the four allegations for a total of 20 days; a one year ineligibility for promotion; as well as a one year period of additional supervision, training and counselling.

4. **4. Cst. Gardner:** Finding that Cst. Gardner "made kicking motions" toward one of the complainants, verbally belittled a complainant, and was held by Judge Weitzel to be a direct participant in each of the three assaults, Chief Graham proposed that Cst. Gardner be suspended for a total of 20 days without pay. He also was demoted one rank for a year and be under supervision and direction of an experienced member and attend and receive training and/or counselling for a year.

5. **5. Cst. Kenney:** Chief Graham placed some emphasis on the fact Cst. Kenney accepted the responsibility as Acting Sergeant when the NCO went off duty. Although Cst. Kenney did not actively participate in the assaults, he knew of them and failed to act to prevent them when he was in a leadership role. In the midst of the three separate assaults, Cst. Kenney noted to Cst. Peters words to the effect that "the worst was yet to come". He too was suspended without pay for 20 days, was reduced in rank for one year and was subjected to a further year of close supervision, training and counselling.

6. **6. Cst. Steele:** Chief Graham took into consideration that as the wagon driver, Cst. Steele removed one of the complainants from the wagon, but did not physically assault him. He did participate in the verbal berating of another complainant and punched the third complainant in the stomach. Like the other three officers other than the two officers who were dismissed, Cst. Steele was suspended for 20 days without pay, reduced in rank for a year, and directed to be under close supervision and attend and receive training and/or counselling for a further year.

Process for a request for a public hearing:

Pursuant to provisions of s.59.1 and various subsections thereof, the respondents in effect have the right to file a written request for a public hearing. Unless a public hearing is granted by the Police Complaint Commissioner, the proposed disposition is final and conclusive and is not open to question or review by a court on any ground.[1]

Pursuant to s 60(1) of the Police Act a Respondent may request a public hearing within 30 days after receiving the disposition record.

In that case, the Police Complaint Commissioner **must** arrange for a public hearing to be held if the disciplinary measure imposed is more severe than a verbal reprimand[2]. Therefore, in the circumstances of each of the Respondents in this case, any one of them who had requested a public hearing would be entitled to one as of right under the Police Act provisions. Where the Respondents do not request a public hearing, the police complaint commissioner

[1] See S.59.1(4)(c) Police Act
[2] See s. 60(3)(a) Police Act

may nevertheless order a public hearing if he determines that a public hearing is necessary in the public interest[3].

Request for a Public Hearing filed by two Respondents:

Chief Graham's decision proposing the disposition on each of the disciplinary defaults against each of the Respondents as indicated above, was rendered on 28 January 2004.

On 17 February 2004, counsel for Cst. Gemmell wrote to me requesting a public hearing be arranged with respect to the disciplinary measures imposed on his client with respect to counts 1 and 5 of the Disposition Report. (I note here that counts 1 and 5 were the two counts where dismissal was proposed. With respect to counts 2, 3 and 4, Chief Graham had proposed various suspensions without pay, reduction of rank and that supervision, counselling and training be imposed.)

On 25 February 2004, counsel for Cst. Kojima wrote to me requesting a public hearing be arranged with respect to the disciplinary measures imposed on his client, without specification of particular counts.

My Review of the Disciplinary Proceedings:

Pursuant to the provisions of s.59.1(1)(b) of the Police Act, I requested the entire unedited record of the proceedings, an unedited copy of the disposition record and a copy of the report sent to the complainant. Additionally, I reviewed a transcript of the proceedings before His Honour Judge Weitzel and the reasons for sentencing. I also ensured that I had the entire police investigation file available for my perusal in reviewing the exercise of my discretion in ordering a public hearing in this matter.

There is no question that pursuant to the provisions of the Police Act, I do not have a discretion as to whether or not to arrange for a public hearing for the two Respondents that requested one. Cst. Gemmell and Cst. Kojima are entitled to a public hearing as of right. The scope of the public hearing however, and how many respondents there should be, remains in issue and requires the careful exercise of my discretion.

Considerations:

At the outset, first and foremost, I had to consider the public interest in deciding as to whether to call a public hearing for the entire event, involving all six officers or for only the two that requested a public hearing. The circumstances of the entire case were very serious and elicited great public concern and public

[3] See s. 60(3)(b) Police Act

expression of views. This incident, in my view, seriously undermined public confidence in the actions of certain members of the Vancouver Police Department and raised the level of public scrutiny of police conduct to new and unparalleled heights. The issue attracted a great deal of public attention in the media and the public were offered many opportunities on talk shows and opinion polls to express their views as to what should happen to the officers involved.

As in so many other issues, public opinion was relatively evenly divided. Not only was there no unanimous view expressed, but to my observation, opinions were polarized to the extreme. Even among staff in my office, there is no unanimity as to what consequences should flow for the various officers under the Police Act. Accordingly, it falls to me as Police Complaint Commissioner to make the difficult decision to determine what "is necessary in the public interest". It must be remembered that my role is merely to decide as to whether or not to hold a public hearing. The decision as to whether the ruling by the discipline authority should be confirmed or substituted with a different result, rests with the Adjudicator.

In a recent decision of the Supreme Court of B.C.[4], Mr. Justice Goepel expressed the role of the Police Complaint Commissioner in these terms:

> *The PCC has been appointed to protect the public interest. He is an independent officer of the Legislative Assembly. Pursuant to the legislation**, it is for the PCC to determine the public interest.*** **(**emphasis added)

Accordingly, since it is my decision to make, I feel that it is incumbent upon me to outline some of the considerations I have taken into account in determining what I believe to be in the public interest. I point out however, that not all of these considerations are to be accorded equal weight.

1. This case involves very serious allegations of police misconduct. Not only were there allegations that these police officers were involved in vigilante summary justice meted out in Stanley Park, but of even more concern to me was the allegation that they were involved in dishonesty in creating a false report as to what happened and who was present. The falsification of the record as to what happened and the apparent meeting after the fact by the officers to discuss what would be reported and what would be omitted is a matter that raises grave concerns about the credibility of the evidence of police officers. This is a matter that goes to the heart of public confidence in the criminal justice system and the role that police officers play in that process. Pursuant to s. 60(5)(a), the seriousness of the complaint is one of the primary factors I need to consider when determining whether to arrange for a

[4] *British Columbia (Police Complaint Commissioner) v. Vancouver (City) Police Department*, [2003] B.C.J. No. 399 (B.C.S.C.)

public hearing. This consideration would weigh in favour of calling a public hearing for all the officers.

2. Another factor that concerns me is the fact that in neither the criminal trial nor the Police Act hearing before the Discipline Authority, was there evidence given under oath or evidence tested by cross-examination. It has long been acknowledged that a combination of sworn evidence that is tested by cross-examination is the best means to ascertain the truth. Nevertheless, that is not to say that all matters necessarily need to be dealt with in this manner. However, in my view, something as serious as these allegations would benefit from the added safeguards of both being given under oath and being subjected to cross-examination. Since at a public hearing the evidence would be under oath and tested by cross-examination, this consideration also weighs in favour of arranging for a public hearing.

3. A somewhat parallel but important separate consideration is the fact that His Honour Judge Weitzel and Chief Graham rendered their respective decisions on considerably different facts. Judge Weitzel was presented with a *Statement of Agreed Facts* in which the various officers admitted to a limited degree their involvement in the conduct they were accused of. The learned trial judge based his sentences entirely on the admitted facts and the submissions of counsel based on those facts. Those agreed facts were not under oath, nor were they subjected to cross-examination. The *Statement of Agreed Facts* simply contained the elements of the offence that the officers were prepared to admit to and which formed the basis of their guilty pleas to the criminal charges. Judge Weitzel was not able to take other factors or allegations into consideration in imposing sentence other than the submissions of counsel based on those agreed facts.

Chief Graham on the other hand, was not so limited in handing down his decision. He had the entire police investigation file, and the statement(s) of the young officer who had been a reluctant witness to the events that unfolded at Stanley Park. He had provided an original statement and various follow-up statements during the course of the investigation that followed into the incident. Similarly, the three individuals who had been the victims of the summary justice meted out in Stanley Park by the VPD officers also provided statements. Chief Graham was not limited by the *Statement of Agreed Facts*, and rendered his decision based on significantly different facts than did Judge Weitzel. In the process, Chief Graham made findings of credibility with respect to the information provided by the young officer who reported the conduct, in some instances preferring his “evidence” over that of certain submissions made by counsel on behalf of their

client officers.[5] He did so without the benefit of assessing their demeanour or seeing how the witnesses stood up to cross-examination. Although Chief Graham was both entitled and required to make findings of credibility where there was a conflict in the information presented to him, it could be argued that such findings would preferably be founded on sworn evidence which had been subjected to cross-examination.

I note in passing, that at the Disciplinary Hearing counsel for some of the officers urged Chief Graham to "punish the police officers" based on the Agreed Statement of Facts, however counsel acknowledged that he was not bound by that document and was "clearly free to make whatever findings he saw fit."[6]

Similarly, counsel at the Disciplinary Hearing themselves raised the issue with Chief Graham that:

> *"…you do not have the opportunity to assess the witnesses and their demeanour, and you do not have the opportunity to hear them, you do not have an opportunity to hear them under cross-examination. That is simply the process that we have, so the most we can do, as counsel, is attempt to demonstrate to you the perhaps inherent unreliability of some of the statements and persuade you that it would be unsafe for you to accept all of the evidence, as contained in those statements, and that is based on propositions of reliability and credibility."*[7]

Other counsel put it this way:

> *"As a result of the procedure mandated by this Act, these officers are denied the opportunity to challenge and confront the complainants about the allegations. Perhaps more importantly you're denied the right or the ability to see and hear and assess these difficult witnesses. It would be my submission to you that a trial judge of the Supreme Court would not be willing to find facts on the material before you, would not even be willing to find facts on affidavit material but you don't have the option of not finding facts, as the Supreme Court Judge."*[8]

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[5] Decision of Chief Graham, January 28, 2004 – Page 8 lines 41 – Page 9 line 1; Page 11 lines 14-20.
[6] Submissions by Mr. Crossin, January 15, 2004 page 9 lines 21-37; Submissions by Mr. Woodall, January 16, 2004 Page 17 line 44 – page 18 line 19
[7] Submissions by Mr. Crossin, January 15, 2004 page 9 line 44 – page 10 line 9
[8] Submissions by Mr. Butcher, January 15, 2004 Page 42 lines 34 – 46

The substance of these submissions were also adopted by other counsel for some the other officers with respect to the inherent unreliability of certain statements and the standard of proof.[9]

In my view, the considerations under this enumerated heading collectively weigh in favour of arranging for a public hearing for all the officers.

4. It cannot escape notice, however, that both Judge Weitzel and Chief Graham in their separate decisions even though they were based on different facts, differentiated between the levels of culpability of the various officers. In other words, both Judge Weitzel and Chief Graham determined that not all the officers should be "punished" equally. In both instances, Cst. Gemmell and Cst. Kojima were singled out for more serious conduct resulting in more serious consequences. The other four officers received lesser sentences and disciplinary penalties. Therefore, this consideration weighs against arranging for a public hearing against the remaining four officers.

5. Chief Graham, in my view, is to be commended for having conducted his role in the Police Act process in a very open, transparent and professional way. His decisive action when the allegations first surfaced, his public personal apology on behalf of the Vancouver Police Department, and his decision to make his ruling on this matter publicly available on the VPD website display excellent leadership. The manner in which Chief Graham handled this particular matter is one that in my view assisted in the restoration of public confidence in the Vancouver Police Department and the police complaint process. There is, unfortunately, a potential risk that if I decide that all six officers should be the subject of a public hearing, that a mistaken and improper inference will be drawn that I necessarily disagree with the way in which Chief Graham dealt with the matter. This consideration weighs against calling a public hearing against all six officers.

6. In the aftermath of Chief Graham's ruling, there has not been a "hue and cry" by the public in general to my knowledge. Although there are still those who believe that punishment of the four officers who were not dismissed was inadequate, there appear to be at least as many members of the public who believe that the penalties meted out by Chief Graham are sufficiently severe and yet afford the officers the opportunity to prove to their Chief and to the public that they are deserving of having been given a second chance. Although more of a neutral consideration, on balance it tips on the side of weighing against calling a public hearing as against those four officers.

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[9] Submissions by Mr. Barclay, January 16, 2004 page 6 lines 25-32

Nevertheless, there are other factors that I must take into consideration. As Police Complaint Commissioner, I have a legislated responsibility to provide effective civilian oversight with respect to the municipal police forces in this province. As expressed in earlier Reasons for Decision[10], I have an ongoing concern about the breaching policy used by the Vancouver Police Department. This incident raises troubling questions as to why it is that the VPD decided to take these individuals to Stanley Park and leave them there, especially since technically, the Park was by regulation closed at that time of night. Was this an isolated incident? Was this generally accepted practice? Was vigilante justice being administered by police officers who had sworn to uphold the law, an acceptable practice within the culture of the Vancouver Police Department? Was this merely a rogue unit of officers who were acting on their own accord, or was this conduct merely a symptom of a more serious and pervasive conduct that has been condoned either explicitly or by willful blindness over the years? Is this but the tip of the iceberg, that was finally exposed because one young officer in training had the courage to resist peer pressure and follow his conscience?

My concerns are not based on mere speculation. In Chief Graham's disciplinary hearing in dealing with Cst. Kenney's involvement in this matter, Chief Graham states:

> *"Cst. Kenney made a comment to Cst. Peters after the second complainant left the area of the wagon and before the third incident that,* ***"The worst is yet to come,"*** *or words to that effect. I found that referred to the upcoming assault on Mr. Wilson. These comments to Cst. Peters and those later in the police car were noted."* (emphasis added).[11]

There is other material in the file that I reviewed that suggests that Cst. Kenney apologized to Cst. Peters for putting him in an uncomfortable position to witness the events that night, especially when he was only 5 weeks out of the academy. Cst. Kenney indicated to him that "it was the style of the guys" and that he had to work with them on a daily basis and therefore had to support them. What is even more disconcerting to me is the fact that Cst. Kenney also allegedly indicated to Cst. Peters that Cst. Kenney's field trainer had put him in a similar position when he witnessed the use of excessive force on a subject by his field trainer. Apparently Cst. Kenney's advice to Cst. Peters was that it "was part of the job and to basically deal with it".

If that allegation is indeed true (noting that it was not given under oath or subjected to cross-examination) it raises the concern of a potentially systemic problem that needs to be reviewed and addressed.

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[10] See my Reasons in the Frank Paul matter (OPCC website)
[11] Page 13 lines 24-30

In the same proceedings, but when referring to the conduct of Cst. Kojima, Chief Graham noted (in the context of Cst. Kojima addressing Cst. Peters):

> "*After the assaults, walking back to the parking lot, Cst. Kojima said words to the effect,* ***"This is the shit that you sign up for".***[12]

If this finding of fact by Chief Graham is correct, this comment raises similar concerns. According to Cst. Kojima's counsel in his submissions to Chief Graham, his client had been out of the Academy for only about a year. If the aforementioned statement attributed to him was indeed made, it raises a concern that Cst. Kojima formed that perception during his recent "on the job training".

Finally, what occurred afterwards is of even greater concern to me as Police Complaint Commissioner. The allegation is that following the assault on the three victims, the six subject officers and the officer-in-training agreed to meet in the District One Briefing Room where a closed-door meeting took place. Without relating at this time the details of the discussions that took place, the allegation is that the officers met and discussed their conduct that evening. After justifying their behaviour to themselves, each officer supported what had occurred and they devised a strategy as to how to write up the report. Cst. Peters was advised that it would be in his best interest to not talk about this with anyone from the Academy. Two of the officers would write up a General Occurrence Report that would attempt to justify the breaching of the three prisoners in the park, and the reason why so many officers accompanied the wagon. Agreement was also reached to purposely falsify the report by omitting to mention that A/Sgt. Kenney and Cst. Peters were present, instead indicating that they were tied up in making notes concerning a previous incident.

What concerns me most on behalf of the public is the fact that this incident appears to be a pre-meditated act, (not an assault committed in the heat of battle) executed with a vigilante mob mentality by those very persons sworn to uphold the law and protect the public. Not only did they commit the act (as evidenced by their guilty pleas) but they planned the means to escape detection and ultimate punishment. They were prepared to falsify records and one of them did so with the full knowledge and acquiescence of the others. If they were prepared to falsify records, the question is raised as to whether or not they would therefore also have been prepared to perjure themselves to maintain their false story in subsequent proceedings. What they did not count on is that one of their new trainees was not prepared to go along with their illegal acts, or be party to their deceit by remaining silent. Once he "blew the whistle" they knew their deceit had been exposed and they

[12] Page 6 lines 6 - 9

would have to acknowledge their misconduct. As I have said earlier, the credibility and honesty of police officers is an issue that goes to the very heart of the administration of justice in general and the criminal justice system in particular.

Decision:

In the final analysis therefore, after having weighed the above considerations, I am persuaded that on balance I should not order a Public Hearing as against all six officers, but only for the two dismissed officers who requested the public hearing. During this public hearing I anticipate that all the facts of the entire incident will be publicly aired. The other four officers will become witness officers who can be compelled to testify under oath. If all six were Respondents, none of them would be compelled to testify. The Adjudicator will be able to make an informed assessment as to the credibility of all the witnesses and make findings of fact upon which the Adjudicator will be able to decide whether to confirm the dismissal of the two officers, or whether different penalties ought be imposed.

To put the remaining four officers in additional jeopardy of being dismissed by the Adjudicator's decision following a public hearing at this time may, on balance, be inappropriate. They have chosen not to appeal their criminal sentences, nor have they requested a Public Hearing. They have accepted their punishment and are in the process of being re-trained, are under close supervision, and working towards re-gaining the trust and respect of management, their fellow officers and the public. Their penalties were not minimal. Chief Graham imposed almost every penalty available to him short of dismissal. In this particular case I believe that I should not "tinker" with the penalties imposed. I should only include all six as Respondents in a public hearing if I am of the view that the conduct of all six necessarily deserves nothing less than dismissal. If I accept Chief Graham's view that these four officers are "salvageable" as police officers and will respond positively to the corrective measures imposed upon them as a consequence of their unacceptable behaviour, then in my view, I ought not subject them to participate further as Respondents in the public hearing. Since there will be a public hearing in any event, dictated by the request of the two dismissed officers for such a public hearing, I am satisfied that all the circumstances of the entire event, (including the conduct of the four officers) will be thoroughly canvassed.

If, as a consequence of the public hearing, and the facts found by the Adjudicator, circumstances dictate that an additional investigation or audit should be launched, I will have the opportunity of making further recommendations to either the Solicitor General[13], the Attorney General[14] or the Vancouver Police Board[15].

[13] See S(50)(f) to make recommendations for a public inquiry under the Inquiry Act (since 11 March 2004)

Accordingly, I will forthwith be contacting Associate Chief Justice Dohm of the Supreme Court of British Columbia with a view to having him select an Adjudicator to be appointed to preside over a Public Hearing into this matter naming Cst. Gemmell and Cst. Kojima as the Respondents.

Dirk Ryneveld, Q.C.
Police Complaint Commissioner,
9 June, 2004

Victoria, B.C.
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[14] See S. 50(3)(e) to make recommendations to undertake a review or audit to prevent recurrence of problems
[15] See. S.50(3)(c)to make recommendations to a board to reconsider policies or procedures that may have been a factor.