

**BRITISH COLUMBIA POLICE COMMISSION**

**IN THE MATTER OF THE *POLICE ACT*, S.B.C. c. 53**

**IN THE MATTER OF AN APPLICATION  
FOR LEAVE TO APPEAL UNDER SECTION 64  
OF THE *POLICE ACT* BY GILBERT J. PELLETIER TO  
THE BRITISH COLUMBIA POLICE COMMISSION  
FROM THE DECISION OF THE VANCOUVER  
POLICE BOARD PRONOUNCED MARCH 22, 1995**

BEFORE CAROLYN ASKEW, MEMBER	)	THURSDAY, THE 12th
	)	DAY OF OCTOBER, 1995
SUSAN BRICE, MEMBER	)	AT VANCOUVER,
	)	BRITISH COLUMBIA
JACK LEE, MEMBER	)	
	)	
	)	

APPEARANCES

Gilbert J. Pelletier	On his own Behalf
Donald J. Sorochan	Counsel to the Commission
Frank G. Potts	Counsel for the B.C. Civil Liberties Association
James Williams	Counsel for Constable Gatto

This is an application by Gilbert J. Pelletier to the British Columbia Police Commission under Section 64 of the *Police Act*, for leave to appeal the decision of the Vancouver Police Board (the "disciplinary tribunal") dated March 22, 1995, not to take disciplinary action against Constable Bruno Gatto. Mr. Pelletier complained in November 1991 of the conduct of Constable Gatto during an incident which took place on January 18, 1991.

Mr. Pelletier's complaint consists of four issues:

- a) that Constable Gatto assaulted him;
- b) that Constable Gatto threw Mr. Pelletier's wallet across the floor causing the loss of money from the wallet;
- c) that on January 19, 1991, Constable Gatto told Mr. Pelletier that if Mr. Pelletier did not lay a charge against Cst. Gatto, that he, Cst. Gatto, would recover Mr. Pelletier's money and that if he did lay a charge, Cst. Gatto would haunt him for the rest of his life; and
- d) that on February 8, 1991, Cst. Gatto again threatened Mr. Pelletier.

As a result of the Vancouver Police Department internal investigation, Constable Gatto was charged with assault contrary to Section 266 of the *Criminal Code*. Constable Gatto was found guilty on April 8, 1992 and given a conditional discharge. He appealed that conviction and on October 9, 1992 the conviction was set aside by Justice Wong of the British Columbia Supreme Court. Once a decision was made to pursue an assault charge against Cst. Gatto, no internal investigation was conducted into any of the other conduct complained of by Mr. Pelletier. The Chief Constable did not take any disciplinary action against Cst. Gatto because he considered that the matters complained of resulted from the same circumstances as gave rise to the criminal proceedings within the meaning of Section 10(4) of the Police (Discipline) Regulations made under the *Police Act*.

The Vancouver Police Board commenced a public inquiry into the complaint in June 1993 and ruled on June 30, 1993, that the facts and circumstances leading to the allegation of assault and the questions relating to the wallet were issues which were dealt with by Mr. Justice Wong and therefore Section 10(3) of the Regulations prevented disciplinary proceedings with respect to those two matters. This decision was appealed by Mr.

Pelletier to the British Columbia Police Commission. Without rendering a decision, the Commission advised counsel to the Board that the June 30, 1993 ruling was premature with respect to the applicability of Section 10(3). The matter was brought back before the Police Board in December 1994, at which time the Board decided it would hear evidence on issues (c) and (d) referred to above and any issue surrounding complaints (a) and (b) that were not dealt with in the criminal proceedings.

The Vancouver Police Board confirmed on March 22, 1995, its June 30, 1993 decision that, pursuant to Section 10(3) of the Police (Discipline) Regulations, no disciplinary proceedings would be taken in respect of issues (a) and (b). With respect to issues (c) and (d), the Board determined that Mr. Pelletier failed to prove beyond a reasonable doubt his allegations against Constable Gatto such as to constitute a disciplinary default. It is this decision from which leave to appeal is sought.

Section 64 of the *Police Act* provides that

"the commission shall grant leave to appeal where, ... the commission has reasonable doubt of the thoroughness or fairness of the investigation by the disciplinary authority or the inquiry by the disciplinary tribunal...".

We accept the submission of counsel for the British Columbia Civil Liberties Association that the disciplinary authority and the disciplinary tribunal misinterpreted Section 10(3) and (4) of the Police (Discipline) Regulation by not making a distinction between the words "arising out of the same facts and circumstances in subsection (3) and the words "separate and distinct issues" in subsection (4). This error caused the disciplinary authority not to conduct an investigation into any aspect of the manner in which Constable Gatto carried out his duties on January 18, 1991. The Commission, therefore, must have a reasonable doubt as to the fairness of the investigation by the disciplinary authority.

Counsel for Constable Gatto submits that the lack of an internal investigation is capable of being cured by the thoroughness and fairness of the inquiry by the disciplinary tribunal. We have reviewed the transcript of the proceedings before the Vancouver Police Board and are satisfied that in this case, the thoroughness and fairness of its inquiry into the complaint of threatening, issues (c) and (d), is such that all evidence that is available to Mr. Pelletier and Constable Gatto was put before the Board and considered by it. Accordingly, leave is refused on the complaint of threatening.

We grant leave to appeal and order a new hearing into any separate and distinct issues arising from Constable Gatto's conduct on January 18, 1991, that were not directly considered by the Courts under the *Criminal Code*. Without limiting the parties in the issues to be brought forward at the new hearing, we include all issues that arise from the complaint that Constable Gatto threw Mr. Pelletier's wallet across the room resulting in the loss of money from the wallet and the issue raised by counsel for the B.C. Civil Liberties Association of whether Constable Gatto's written statement to the disciplinary authority dated March 3, 1991 constitutes a default under Section 4(a) of Appendix A of the Regulation.

Dated at Vancouver, British Columbia this 11<sup>th</sup> day of April, 1996.

"Carolyn Askew"

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CAROLYN ASKEW

"Susan Brice"

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SUSAN BRICE

"Jack Lee"

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JACK LEE