



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

August 12, 2008

Vancouver Police Board
Room 702 - 2120 Cambie Street
Vancouver BC
V5Z 4N6

Attention: Mayor Sam Sullivan

Dear Mayor Sullivan:

**Re: Complaint against Chief Constable Graham
(OPCC File No. 06-3172)**

On June 24, 2008, I received your decision as Discipline Authority and accompanying Reasons, in which you determined that the evidence in the investigation report was not sufficient to warrant the imposition of any disciplinary or corrective measures in the above referenced complaint.

Chief Constable Jim Cessford substantiated the disciplinary default of Discreditable Conduct as a result of his investigation into the Pivot Legal Society's "non-cooperation" complaint against Chief Constable Graham. The rationale for his finding was detailed in his investigation report on page 47. Specifically:

I met with Supt. Handy on the 24 April 2008 and he advised me that he had twice met with Chief Graham and had requested cooperation from VPD members. As the cooperation was not forthcoming he wrote a letter to Chief Graham asking for cooperation, but he did not receive a reply. Supt. Handy confirmed again the fact that he was concerned about the lack of cooperation from VPD members and he felt Chief Graham should have ordered cooperation.

Chief Constable Graham was made aware on several occasions that some Vancouver Police Department members were not submitting their reports in a timely fashion. It took some members several months to comply with requests for interviews and duty

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DIRK RYNEVELD, Q.C.
Police Complaint Commissioner

Mailing Address:
3rd Floor – 756 Fort Street
PO Box 9895, Stn Prov Govt
Victoria, BC V8W 9T8

Tel: (250) 356-1846
Fax: (250) 356-6503
Toll Free 1-800-663-2421

reports, and eventually, nine (9) police officers received discipline by way of managerial advice for their failure to submit duty reports or attend for an interview as required.

While Chief Graham did commit to cooperating with the investigation and gave direction to his IIS Inspector to ensure full compliance, this did not occur in any timely fashion, and Chief Graham did not fully exercise his authority in ensuring that his members cooperated as required.

Chief Graham in interview stated that it was his view that he had the authority to order members to attend for interviews, and that there was no doubt they were under a legal requirement to do so:

Q: Your understanding of your authority to order members to attend for interviews with the RCMP, I think you've clearly stated that there was no doubt that they had too? (sic)

A: Yeah there was no doubt at all. I mean orders are orders. Orders can be given and they can be challenged if they're inappropriate. I was very sensitive to the rules under the Collective Agreement. I was sensitive to the Police Act. But more, in addition to that I was very sensitive in that I wanted compliance....

As was noted by Chief Graham himself, 'orders are orders. Orders can be given and they can be challenged if they are inappropriate.' It is clear that, in his own mind, Chief Graham had no doubt that he had the lawful authority to issue the order to cooperate, and in the face of being told on several occasions that cooperation was not forthcoming with respect to interviews and duty reports, it was incumbent upon him to do more than he did in this situation to ensure compliance from his members.

While Chief Graham did instruct Inspector McKenna to ensure cooperation and compliance, it is apparent that Inspector McKenna was unsure of his authority. That was evident when the letter forwarded to the members with the Affidavit of Complaint stated in part: "you may however, want to delay your submission of a duty report".

While Chief Graham states that he was not aware of the letter accompanying the affidavits, it was his responsibility as the Discipline Authority to ensure compliance. While he did not condone the lack of cooperation, and he repeatedly maintained that he expected his officers to comply, he did not take the necessary steps to ensure that they did so. It is my view that there is clear and convincing evidence that Chief Graham committed, through his inaction, the Code of Conduct offence of Discreditable Conduct which provides as follows:

5. For the purposes of section 4 (1) (a), a police officer commits the disciplinary default of discreditable conduct if

(a) the police officer, while on duty, acts in a disorderly manner or in a manner that is

(i) prejudicial to the maintenance of discipline in the municipal police department with which the police officer is employed, or

(ii) likely to discredit the reputation of the municipal police department with which the police officer is employed.

Chief Constable Cessford was of the view that the misconduct in this instance could fall under either of the above, but that 5(a)(i) was the more accurate provision. That is, acting in a manner that was prejudicial to the maintenance of discipline in the municipal police department.

In recommending an appropriate penalty for his finding of discreditable conduct, Chief Constable Cessford noted that Chief Constable Graham had since retired. However, Chief Cessford advised that had Chief Constable Graham remained the Chief of the Vancouver Police Department, he would have recommended 'management advice' to consist of Chief Constable Graham reporting to the Police Board any changes he had made following the RCMP E-Pivot investigation, and the status and results of those changes.

As you reported in your Reasons, Chief Constable Graham had in fact been directed by letter dated April 28, 2005 to advise the Police Board "what initiative can be taken by you, your deputies and decision-takers from the other main parties to create the required level of cooperation in future".

It was your conclusion that working with the Police Board, Chief Constable Graham had accomplished the very objective of the proposed sanction; having come back to the Board with a policy aimed at tightening timelines for officers' cooperation with investigations, and making significant changes to the operations of the Professional Standards Section. I do not disagree with that conclusion, and acknowledge that once a police officer has resigned, there is no longer an opportunity to impose discipline on the officer. Therefore, what the appropriate discipline would be in this matter is thereby rendered moot. I accept the fact that the investigation resulted in a recommendation to the DA that the default of Discreditable Conduct was substantiated and that but for the retirement of Chief Graham, discipline would have been imposed.

Pursuant to s. 60(4) and s.60(5)(e), I am still obliged to consider whether a public hearing is necessary in the public interest. Even allegations meeting the minimum evidentiary standard of proof are not automatically the subject of a public hearing. Hard and fast rules cannot be imposed since the public interest is determined by the particular circumstances of each case and those factors set out in section 60(5) of the *Police Act*.

Likewise, although cost alone is not a determining factor, it must be considered in justification of the expenditure of significant public funds associated with the calling of a public hearing. I am of the opinion that it would not be in the public interest to arrange a public hearing into the circumstances of this complaint, notwithstanding that Chief Constable Graham has retired.

That decision is not intended to discount the concerns of the third-party complainant or dismiss the findings of Chief Constable Cessford's investigation. I am satisfied that Chief Constable Cessford appropriately substantiated the disciplinary default of discreditable conduct against Chief Constable Graham.

However, a public hearing is not necessary to preserve or restore public confidence in the complaint process or the police. Please be advised that third-party complaint of the Pivot Legal Society has now been closed.

Yours truly,

A handwritten signature in blue ink, appearing to read "Dirk Ryneveld", with a long horizontal flourish extending to the right.

Dirk Ryneveld, Q.C.
Police Complaint Commissioner

cc: Jamie Graham
cc: Staff Sergeant Mario Giardini
cc: Chief Constable Cessford