

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

AND

IN THE MATTER OF [REDACTED]

NOTICE OF DISCIPLINE AUTHORITY'S DECISION

TO: [REDACTED] Member  
AND TO: [REDACTED] Investigator  
AND TO: Mr. Stan Lowe Police Complaint Commissioner

---

On the [REDACTED] of [REDACTED], at the end of their shift, [REDACTED] and a couple of his colleagues stopped in at [REDACTED] for a drink. They arrived just before [REDACTED] and remained until the bar closed two hours later. At [REDACTED] [REDACTED] was driving home when he was pulled over at a police roadblock on the Coast Meridian Road overpass in Port Coquitlam. [REDACTED], an RCMP officer, approached [REDACTED] vehicle and asked if he had had anything to drink that evening. [REDACTED] said he had had one beer at eleven o'clock. [REDACTED] asked [REDACTED] to accompany him back to the police cruiser where he took a few minutes to complete some paperwork. He asked for [REDACTED] driver's licence. [REDACTED] presented that and then also showed the officer his police badge and identified himself as a member of the [REDACTED]. [REDACTED] then read him the Immediate Roadside Screening demand and [REDACTED] took the test as required. He received a "warn" reading and was given a three day driving prohibition. His vehicle was towed.

**The Disciplinary Investigation:**

The Office of the Police Complaint Commissioner was notified of these circumstances and on October 21<sup>st</sup>, 2016 issued an *Order for Investigation* into the matter. The original notice related to a single count of discreditable conduct and alleged that [REDACTED] had driven a motor vehicle while his ability to do so was affected by the consumption of alcohol. Two amendments were delivered later and ultimately [REDACTED] was directed to investigate three counts, namely:

1. That on [REDACTED], [REDACTED] committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, that while off-duty, [REDACTED] [REDACTED] operated a motor vehicle while under the influence of alcohol and received an Immediate Roadside Prohibition.
2. That on [REDACTED], [REDACTED] committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, that while off duty and during a roadside traffic stop for sobriety, [REDACTED] displayed his police badge to the investigating officer.
3. That on [REDACTED], [REDACTED] committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, that while off duty, [REDACTED] [REDACTED] interfered with an impaired investigation by lying to the investigating RCMP officer about his consumption of alcohol.

On [REDACTED] [REDACTED] [REDACTED] delivered his final investigative report. He found that the first count of discreditable conduct was substantiated. He found that the second and third counts were not substantiated. On [REDACTED], [REDACTED], as the Discipline Authority, issued his decision under Section 112 of the Police Act and adopted [REDACTED] findings. The Police Complaint Commissioner, having reviewed the allegations in their entirety considered that there was a reasonable basis to believe that the decision of the Disciplinary Authority as it related to counts 2 and 3 was incorrect. Pursuant to the provisions of section 117(4) of the Police Act he appointed a retired judge of the Provincial Court of British Columbia to review allegations two and three and arrive at her own decision based on the evidence. The issues to be decided are as follows.

**Did [REDACTED] commit discreditable conduct when, during the course of the roadside investigation, he displayed his police badge?**

Section 77(3) (h) defines discreditable conduct as when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. In determining whether as an off duty police officer, ██████ engaged in discreditable conduct when he displayed his police badge to ██████, I agree with and adopt the assessment made by retired judge, Ian Pitfield in his OPCC decision of August 11<sup>th</sup>, 2010. There he said:

I am satisfied that the reasonable community expectation is that an off-duty police officer will be accorded the same treatment and be subject to the same sanctions as any other citizen. The community will not accept a double standard of law enforcement.

A member is guilty of discreditable conduct then if he displays his badge with the hope of receiving preferential treatment. Both subjective and objective evidence is relevant to this assessment of motive.

██████ said that he identified himself as a police officer because he was unsure of his obligations when involved in an off duty incident or investigation. He said that in other off duty incidents where he had been a potential witness or victim he had always identified as a police officer. He knew that he was required to identify himself as a member if the incident was one in which the Independent Investigations Office might become involved.

In conclusion, ██████ said, "...when displaying my badge I was concerned that if I didn't identify myself I may be breaching a ██████ policy by not identifying myself and becoming the subject of complaint in an off duty investigation."

The manner in which ██████ displayed his badge lends credibility to this explanation. When he was asked for identification he produced his driver's licence and then extended his badge so that ██████ could examine it. When the investigating officer asked for clarification as to which police force he worked for, ██████ provided that information. No further reference was made to his status as an officer. Both ██████ and ██████ describe his behaviour as professional and appropriate. They did not feel that he was expecting any preferential treatment. Since members of the RCMP are required to identify themselves as officers if they are involved in an off duty incident, they attached no particular significance to his disclosure.

Considering ██████ explanation and his overall conduct as confirmed by the investigating officers, I accept his evidence and find that the count alleging that he engaged in discreditable conduct by displaying his police badge is unsubstantiated.

**Did [REDACTED] commit discreditable conduct by interfering with an impaired investigation by lying to the investigating RCMP officer about his consumption of alcohol?**

[REDACTED], in his duty report and in his interview with the investigator in this matter, has admitted that on the night in question he consumed five or six beer between about 11:00 PM on [REDACTED] and 1:00 AM on [REDACTED]. It is also common ground that when [REDACTED] asked if had had anything to drink he said he had had one beer at about 11:00.

[REDACTED] noted that since [REDACTED] had had a drink at 23:00 hours, he had not lied. He concluded that if [REDACTED] had mentioned the additional four or five drinks he had had it would not have changed the course of the investigation. He would still have been required to provide a breath sample. Given this analysis he found that the discreditable conduct in count two was not substantiated.

Again I quote a comment made by retired judge Ian Pitfield. When dealing with a case under the Police Act which was decided December 9<sup>th</sup>, 2015, he said:

With good reason, the public places considerable trust in police forces to address and deter driving under the influence of alcohol. Moreover, the public can reasonably expect individual officers *to be truthful* in their dealings with other officers, whatever the circumstances, and whether on or off duty. It is unlikely that the public would condone the conduct of an officer who *lies* to another officer for the purpose of avoiding or attempting to avoid the requirement that he or she submit to an ASD test at a roadblock. Knowledge that an officer had engaged in conduct of that kind would be likely to bring discredit upon the police department of which the officer is a member. (Emphasis mine.)

I agree with these comments but would go a step further and say that the public expectation that an officer will be truthful means that few people are likely to be impressed with the type of hair splitting that would distinguish between a bare faced lie and a partial truth if that partial truth is told with the intention to deceive.

When [REDACTED] questioned [REDACTED] about the answer that he had given when he was asked if he had had anything to drink, [REDACTED] denied that his misleading response was offered with the intention of avoiding an Immediate Roadside Demand. He said:

As I stated in my duty report, I panicked. I stated to [REDACTED] that I had consumed alcohol and from my experience in conducting impaired driving investigations, and I have conducted several of them, any admission of the consumption of alcohol will almost certainly lead to an impaired driving investigation and it did in this case. If I wanted to attempt to avoid any ASD demand I would've said I had nothing to drink.

I believe [REDACTED] when he says he panicked. His misleading statement about the alcohol he had consumed did not appear to arise as a result of careful consideration or planning. I do not think, however, that he was implying that he was in such a state of panic that he momentarily forgot about the rest of his drinks. Rather, I find that his answer reflects an ill-considered effort to minimize his culpability. I note that when he was asked if he had had anything to drink he not only admitted to only one drink but also mentioned that it had been over two hours earlier that he had consumed it. Had he said he had finished one drink about half an hour before being stopped the implications would have been quite different. As a police officer, he knew that the time of the last drink would be an issue the investigating officer would need to cover off so that the possibility of mouth alcohol could be eliminated before a breath sample was collected. He would have an innocent reason for focusing on that last drink. The same cannot be said for his reference to a single drink consumed some two hours earlier. I find that when he made that comment he was inviting the investigating officer to conclude that the alcohol would have been metabolized and that little would remain in his body. While the officer might still make a demand it is likely that this story, if believed, would have increased the probability that he would not waste his time by doing so. It appears then that this incomplete information was intended to deceive and that there was at least a hope that it would bring the investigation to an end.

Referring back to the public expectation that a police officer will be truthful, it appears that [REDACTED] engaged in discreditable conduct by *attempting* to interfere with an impaired investigation by *providing a misleading answer* to the investigating RCMP officer about his consumption of alcohol. That, however, is not the allegation I have been directed to consider. Rather, I have been asked to decide whether [REDACTED] interfered with an impaired investigation by lying to the investigating RCMP officer.

The *English Oxford Dictionary* defines lying as making an intentionally false statement.

Like [REDACTED], I must conclude that since [REDACTED] did have a drink at about 23:00 hours he was not lying. Nor did his less than forthright answer, whatever its intent, interfere with the impaired driving investigation.

Since it appears that [REDACTED] engaged in discreditable conduct by attempting to interfere with an impaired investigation by providing a misleading answer to the investigating RCMP officer

about his consumption of alcohol I have considered whether I am able to make this finding the basis for any sort of disciplinary action. I think not.

Police Act s117(8)(d) says that notification of the retired judge's determination must include:

(i) whether or not, in relation to *each allegation of misconduct considered* by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures...(emphasis mine.)

This wording persuades me that I am limited in my considerations to the allegations as framed in the Notice of Appointment of Retired Judge. Accordingly, I find that the allegation contained in count three of that notice is unsubstantiated.

Summary of Decision

For the above reasons, I confirm the decision of the Discipline Authority and find that the evidence does not appear sufficient to substantiate allegations 2 or 3.

Pursuant to s. 117(11) of the Police Act, my decision is not open to question or review by a court on any ground. It is final and conclusive.

Dated at Surrey, British Columbia this 29th day of May, 2017.



Hon. Carole D. Lazar, Discipline Authority