

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

AND

IN THE MATTER OF CONSTABLE [REDACTED]

NOTICE OF DISCIPLINE AUTHORITY'S DECISION

TO: Constable [REDACTED] Member
AND TO: Inspector [REDACTED] Previous Discipline Authority
AND TO: Mr. Stan Lowe Police Complaint Commissioner

On the 25th day of November 2008, Constable [REDACTED]'s seventeen year old daughter, [REDACTED], was involved in a motor vehicle accident. She was a new driver at the time and she collided with a parked vehicle starting a chain reaction which resulted in damage to three motor vehicles as well as the one that she was driving. [REDACTED] police attended; Constable [REDACTED] was designated as the chief investigator. [REDACTED] called her father, Constable [REDACTED], from the scene and he attended. He had some conversation with Constable [REDACTED] and advised him that he was an officer with the [REDACTED] Police Department. [REDACTED] had been badly shaken up in the accident and her father was solicitous of her welfare. It became evident that it would be some time before the paperwork was completed so Constable [REDACTED] suggested that Constable [REDACTED] take his daughter home. He said he would attend at their house the following evening.

On November 26, 2008 Constable [REDACTED] arrived at the [REDACTED] home and was invited into the dining room. Constable [REDACTED] Mrs. [REDACTED] and their daughter [REDACTED] were all present. Constable [REDACTED] provided [REDACTED] with a copy of the MV 60-20 form and explained it to her. Constable [REDACTED] said that he noticed that

Constable [REDACTED] had brought his violation ticket book with him. The officer confirmed this and said he was planning to serve [REDACTED] with a ticket for driving without due care. In his discussions with the young person Constable [REDACTED] noted that she seemed shaky and was not very responsive. Constable [REDACTED] says she had started to cry. At this point Constable [REDACTED] asked his wife and daughter to leave the room. Once they were gone he entered into a conversation with Constable [REDACTED] about his daughter's circumstances. He also asked Constable [REDACTED] if he had taken any measurements at the scene. He said he had spoken to someone in his traffic department and he suggested that there was not enough evidence to warrant a charge of driving without due care. The conversation lasted three or four minutes. The tone was friendly. At the end of the conversation, Constable [REDACTED] decided to discuss the matter further with his supervisor prior to issuing a violation ticket.

After discussions with his supervisor, acting Staff Sergeant [REDACTED], and after receiving an opinion from Crown Counsel, [REDACTED], Constable [REDACTED] decided to proceed with the original charge against [REDACTED]. He tried to reach her on a several occasions without success. Finally he contacted Constable [REDACTED] to ask that a time be arranged when he could meet [REDACTED] and serve her. In the course of this conversation, he says that Constable [REDACTED] made reference to a case that had been reported in the newspapers where [REDACTED] Police had dealt with off duty [REDACTED] police officers allegedly involved in an assault but where to date, no charges had been laid. Constable [REDACTED] felt that this comment was out of line and told Constable [REDACTED] that he did not want to go down that road. He said it had nothing to do with their case and again asked when [REDACTED] would be home. Constable [REDACTED] said he could come by around 6:30 or 7:00 that evening. Constable [REDACTED] attended at that time and was able to serve the young person.

[REDACTED] disputed the violation ticket and the matter was eventually set for hearing on January 6th, 2010. Constable [REDACTED] was initially planning to represent his daughter but shortly before the first trial date, he decided to retain counsel for her. The trial was adjourned and reset for May 6, 2010. On that date, [REDACTED]

approached Constable [REDACTED] at the courthouse and reported that prior to the January court date she had had a telephone conversation with Constable [REDACTED] in which he said that a person did not have to attend court even if they had been served with a subpoena. She says he did not expressly mention her daughter [REDACTED] when he said this but since he knew that [REDACTED] had been served a subpoena she assumed this was what he was referring to. Constable [REDACTED] acknowledges speaking to Mrs. [REDACTED] on the day in question but denies that he told her that [REDACTED] could disregard the subpoena.

[REDACTED] was convicted at trial and Constable [REDACTED] was frustrated and upset. As he rose to leave to court room he says he muttered, "Fucking liars," referring to a number of the crown witnesses. He says this was not directed to anyone in particular. Constable [REDACTED] who was sitting next to Constable [REDACTED] believes that the phrase uttered was, "You're a fucking liar," and that it was directed to him. Outside the court room, Constable [REDACTED] had a verbal interchange with [REDACTED] one of the crown witnesses. There was a report that Constable [REDACTED] had used profane language toward Mr. [REDACTED]

The events that occurred or were reported on the day of the trial were conveyed to Sergeant [REDACTED] of the [REDACTED] Professional Standards Division. The matter involving [REDACTED]'s allegation was referred to the [REDACTED] Police detachment to determine whether a Criminal Code charge of Obstruction of Justice was warranted. When this was answered in the negative the decision was made to deal with Constable [REDACTED] behaviour throughout the course of this investigation and prosecution under the provisions of the Police Act.

On August 10th, 2010 Sergeant [REDACTED] of the [REDACTED] Police Department's Professional Standards Division wrote to Bruce Brown, the Deputy Police Commissioner, to request an order to investigate allegations of potential B.C. Police Act misconduct. An Order for Investigation was issued September 28th, 2010. Sergeant [REDACTED] [REDACTED] was assigned the investigation and produced a final report on June 20th 2011. He found that none of the allegations against Constable [REDACTED]

had been substantiated. Upon receipt of this report Inspector [REDACTED], the disciplinary authority, "unsubstantiated" all claims against Constable [REDACTED]

Inspector [REDACTED]'s decision along with Sergeant [REDACTED]'s report were provided to Police Commissioner Stan Lowe who upon reviewing the allegations concluded that there was a reasonable basis to believe that the decision of the disciplinary authority was incorrect. Accordingly, on July 19th, 2011 the writer was appointed as adjudicator pursuant to section 117(4) of the Police Act.

The Allegations:

The Notice of Appointment of Adjudicator sets forth three counts of Discreditable Conduct:

- Count one alleges that Constable [REDACTED] intimidated Constable [REDACTED] and tried to persuade him not to issue a traffic ticket.
- Count two alleges that Constable [REDACTED] attempted to dissuade witnesses from attending court for his daughter's trial.
- Count three alleges that he behaved in a discreditable manner by swearing at Constable [REDACTED] and witness, [REDACTED]

Count one: Did Constable [REDACTED] intimidate Constable [REDACTED] with the intent of persuading him not to issue a traffic violation ticket to [REDACTED] ?

I will preface this analysis by noting that the investigation on this count did not arise as a result of a direct complaint by the aggrieved party. Constable [REDACTED] was a very new officer when he dealt with this case and he sought guidance from Sergeant [REDACTED] his supervising officer. When the ticket was disputed, Sergeant [REDACTED] was assigned to prosecute the case. Both these senior officers had concerns about the interaction between Constable [REDACTED] and Constable [REDACTED] It was their allegations that made their way into the complaint process. Those allegations were

vague and based on hearsay. The better evidence is that of the parties involved, Constable [REDACTED] and Constable [REDACTED]. They do not disagree in any material way.

On the 25th of November 2008, the two officers met at the scene of the accident. Constable [REDACTED] introduced himself as the registered owner of the vehicle [REDACTED] [REDACTED] had been driving. He said he was a police officer with the [REDACTED] Police. He asked if Constable [REDACTED] had checked to see if the emergency brake was set on the car that his daughter had hit. Constable [REDACTED] said he would check that out. [REDACTED] [REDACTED] was in obvious distress. Her father was trying to console her. Constable [REDACTED] realized it would be some time before he had completed all the paperwork on the incident so after assuring that he had an address for the [REDACTED] he suggested that Constable [REDACTED] take his daughter home. It was agreed that he would attend their residence the following evening. Constable [REDACTED] said in his statement of November 23rd, 2010 that the conversation with Constable [REDACTED] lasted only about a minute. He described Constable [REDACTED] as "very polite, obviously extremely concerned for his daughter's safety."

On the evening of November 26th, 2008 Constable [REDACTED] attended the [REDACTED] residence. He was invited in and offered a seat at the dining room table. Constable [REDACTED] Mrs. [REDACTED] and [REDACTED] were present. Constable [REDACTED] gave [REDACTED] a copy of the MV 60-20 form and explained it to her. He noted that she was shaking. She responded to his comments in monosyllables. Constable [REDACTED] said that she had started to cry. Constable [REDACTED] was not invited to confirm or deny this. Regardless, it is agreed that the youngster was visibly distressed.

At this point in their conversation, Constable [REDACTED] said that he could see that Constable [REDACTED] had brought along his Motor Vehicle ticket book. Constable [REDACTED] acknowledged this and said he planned to serve [REDACTED] with a ticket for driving without due care and attention. Constable [REDACTED] then asked his wife and daughter to leave the room. Once he and Constable [REDACTED] were alone, Constable [REDACTED] provided some background on his daughter and her prospects. He also said that he had spoken to someone in the [REDACTED] traffic division and did not believe that a

charge of driving without due care was justified. He asked if Constable [REDACTED] had taken measurements at the scene. On the basis of the information that Constable [REDACTED] had provided, Constable [REDACTED] felt there were some valid concerns so he decided to do some further investigation and to discuss the matter with Acting Staff Sergeant [REDACTED] before issuing the Traffic Violation ticket.

By the time Constable [REDACTED] gave his statement in the fall of 2010, he had had the benefit of some discussions with Sergeant [REDACTED] [REDACTED] had expressed the view that by having [REDACTED] leave the room, Constable [REDACTED] had come close to obstructing Constable [REDACTED] in the execution of his duties. Perhaps because of this input, Constable [REDACTED] in his statement discusses at some length the fact that it should not have been necessary to have the young person leave the room. Whatever Constable [REDACTED]'s reasons for asking his daughter and wife to leave may have been, they are not relevant to this count. Sergeant [REDACTED] was under the impression that Constable [REDACTED] had come to take a statement from [REDACTED] and that by having her leave the room, her father prevented this. [REDACTED] at no point indicated any intention of taking a statement. It has also been suggested that Constable [REDACTED] ordered his daughter out of the room so that Constable [REDACTED] could not serve her with a traffic ticket. This does not seem likely. Constable [REDACTED] had assured that his daughter was present when Constable [REDACTED] arrived. There is no suggestion that the young woman left the house or that Constable [REDACTED] would not have called her back to the room if asked to do so. As it was, Constable [REDACTED] is clear that his actions would not have been different had [REDACTED] remained in the room. He would still have left to reconsider the issue of whether he was pursuing the correct charge.

In regard to this conversation, Constable [REDACTED] said he did not feel intimidated. He does not think he ever told Constable [REDACTED] that he was a new member; nor does he ever suggest that his inexperience was the subject of comment by Constable [REDACTED]. He described their conversation as very civil. He said, "...at no time did I really believe that he was trying to sway my opinion." That statement could be challenged since it seems obvious that Constable [REDACTED] was hoping to see

Constable [REDACTED] change his mind. Still as the father of a minor child he was entitled to advocate for her as long as he did not use his position as a police officer to exert additional influence.

A few days after Constable [REDACTED] had this discussion with Constable [REDACTED] he attended a prearranged appointment with Acting Staff Sergeant [REDACTED]. He came to this appointment with a list of facts he hoped would persuade the officer that the charge under consideration was not appropriate. Again he was respectful in his presentation. Acting Staff Sergeant [REDACTED] did not express any concern about the propriety of this effort at advocacy though it was, if anything, more intense than the discussion that Constable [REDACTED] had engaged in with Constable [REDACTED] a few days before.

In his discussion with Acting Staff Sergeant [REDACTED] Constable [REDACTED] had expressed the view that sometimes police were afraid of being accused of bias towards their own and therefore were harsher when considering charges against fellow police officers or members of their family. [REDACTED] considered this a valid concern so he decided to get an outside opinion. He contacted Crown Counsel. The reconsideration of the charge took some time so it was not till February that the decision was made to issue the ticket for driving without due care. At that point Constable [REDACTED] made several unsuccessful attempts to serve [REDACTED]. He gives no particulars of these attempts but other witnesses provide hearsay evidence suggesting that he attended the home on a couple of occasions when [REDACTED] was not there and that he tried to contact her on her cell phone when she was at school. What is common ground from the direct evidence of both Constable [REDACTED] and Constable [REDACTED] is that when Constable [REDACTED] paged Constable [REDACTED] [REDACTED] called back and between the two of them they arranged a time when Constable [REDACTED] would have his daughter available to be served.

In that conversation, Constable [REDACTED] made mention of a [REDACTED] case in which an off duty [REDACTED] police officer had been involved in a fight but where no charges had been laid. Constable [REDACTED] thought this reference was inappropriate.

He thought perhaps Constable [REDACTED] was implying that since the [REDACTED] Police Department had done the [REDACTED] Police officer a favour that the [REDACTED] police should do him a favour. It is not suggested that Constable [REDACTED] actually said anything like that. Regardless, when Constable [REDACTED] told Constable [REDACTED] not to go there, the line of conversation was immediately abandoned. Constable [REDACTED] said he would make his daughter available between 6:30 and 7:00 that evening. Constable [REDACTED] felt that his manner had changed and that he was abrupt.

That evening, Constable [REDACTED] attended at the [REDACTED] residence and served [REDACTED] [REDACTED] with the traffic ticket. It was almost two years later that Constables [REDACTED] and [REDACTED] were asked to give statements about this encounter. This evidence is conflicted and muddled. What is clear is that [REDACTED] was present at the door and Constable [REDACTED] was able to serve her. Constable [REDACTED] says that Constable [REDACTED] asked [REDACTED] to sign the ticket and he interjected by saying she did not have to, that Constable [REDACTED] could fill in the affidavit of service on the back. He says Constable [REDACTED] seemed annoyed at this interference and asked [REDACTED] directly if she would sign it. She did not. Constable [REDACTED] remembers this differently. He says he knew he could fill out the affidavit of service on the back of the ticket so he never asked [REDACTED] to sign it. Regardless of which version of the facts is believed, this is a quibble about procedure and does not amount to an effort to effect the laying of the charge.

Sergeant [REDACTED] had the impression that Constable [REDACTED] became hostile and verbally abusive toward Constable [REDACTED]. Constable [REDACTED] does not complain of anything that could be construed as verbal abuse until after the verdict was announced at the trial of May 6th, 2010. Certainly, Constable [REDACTED] was less convivial after the charge was laid but by this time he was no longer trying to discuss the appropriateness of the charge or the [REDACTED] police's exercise of discretion.

I find that the allegation contained in Count one, is not substantiated.

Count two: Did Constable [REDACTED] attempt to obstruct by attempting to dissuade witnesses from attending the traffic hearing of his daughter, [REDACTED] [REDACTED] ?

When Constable [REDACTED] attended at the Richmond traffic court on May 6, 2010 he was approached by [REDACTED], the mother of [REDACTED]. Ms [REDACTED] was a passenger in the vehicle driven by [REDACTED] [REDACTED] and was attending court to give evidence on behalf of the crown. Mrs. [REDACTED] reported that days prior to the first hearing date set for this matter she had received a phone call from Constable [REDACTED]. She reported that he told her that a witness did not have to attend court even if subpoenaed. Ms [REDACTED] did not think this was correct. She sought to check this information with Constable [REDACTED].

Later that same day, Constable [REDACTED] was approached by [REDACTED], whose son had also been a passenger in the [REDACTED] vehicle. He said his son told him that he'd had a discussion with Constable [REDACTED] in which the officer had told him that he did not have to attend court even if he had been served with a subpoena.

Based on these allegations, the [REDACTED] Police were asked to conduct an investigation to determine whether charges of Obstruction of Justice should be laid. These charges were not approved.

Dealing first with the allegation made by [REDACTED], Sergeant [REDACTED] of the [REDACTED] Police interviewed [REDACTED] and her husband [REDACTED] [REDACTED] on June 28th, 2010. He accepted a written statement from Constable [REDACTED]. Later, Constable [REDACTED] was interviewed by Sergeant [REDACTED]. Mrs. [REDACTED] explained that at the end of December 2009 or at the beginning of January 2010, her daughter, [REDACTED] was served with a subpoena requiring her to attend as a witness at the trial of [REDACTED] [REDACTED]. Shortly thereafter [REDACTED] called [REDACTED] and asked if she had received a subpoena. [REDACTED] said she had. Minutes later [REDACTED] called back. This time Ms [REDACTED] answered the phone. [REDACTED] asked if Ms. [REDACTED] would speak to Constable [REDACTED]. She said she would. When Constable [REDACTED] took the phone he introduced himself and made some comments about what a good kid his

daughter was. He went on to inquire about some minor injuries [REDACTED] had sustained in the accident. He was assured that she had fully recovered. There was some discussion about the fact that both [REDACTED] and [REDACTED] were stressed about their upcoming court appearances. Ms. [REDACTED] said that Constable [REDACTED] complained about the investigation done by the [REDACTED] police and said they were being overzealous. He went on to express the view that it should never have gone this far. At some point he told Ms [REDACTED] that a person was not obliged to give the police a statement at all. Nor did they have to attend court even if they had been served with a subpoena. Ms. [REDACTED] did not believe this but she said nothing. She wondered if maybe you could phone in if you were sick or something like that. When she got off the phone she said she went and read the subpoena more closely. She said that Constable [REDACTED] did not specifically mention [REDACTED] when he spoke of the subpoena though he did know she had been served. Ms [REDACTED] had never met Constable [REDACTED] before but she seemed anxious to be fair to him and stressed that he never asked to speak to [REDACTED]

Ms. [REDACTED] husband [REDACTED] [REDACTED] was home at the time that Ms [REDACTED] received this call. He confirmed that she discussed with him Constable [REDACTED]'s comment about how a person was not required to attend court even if subpoenaed. Mr. [REDACTED]'s evidence would only be relevant if there is some suggestion that Ms. [REDACTED]'s story was a recent fabrication.

When Staff Sergeant [REDACTED] was conducting the investigation to determine whether charges should be laid under the Criminal Code, Constable [REDACTED] provided a written statement in which he denied telling Ms. [REDACTED] to do or to omit doing anything. He said he was calling simply to determine whether [REDACTED] [REDACTED] had been served with a subpoena. He said that though he had been trying unsuccessfully to get disclosure he understood that she would say that immediately prior to the accident it was she, not [REDACTED] that [REDACTED] [REDACTED] was talking to. Constable [REDACTED] felt that this evidence would help to rebut the Crown's theory that the accident occurred because [REDACTED] and [REDACTED] [REDACTED] were arguing about their music

selection. Constable [REDACTED] said that he just wanted to assure that she had been subpoenaed; he had no reason to try to persuade her not come to court.

On March 18th, 2011 Constable [REDACTED] was asked about this allegation by Sergeant [REDACTED]. He denied telling Ms [REDACTED] that [REDACTED] did not need to come to court even if she had been served with a subpoena. He referred back to his written statement and then went on to say that he heard [REDACTED] evidence in court and had a transcript. He said she did not provide any evidence at all about the accident. He was never asked nor did he mention where he got the idea that she would assist his daughter's case by rebutting the suggestion that [REDACTED] was distracted by her argument with [REDACTED].

This allegation turns on the credibility of the two parties to the telephone conversation that both acknowledge having. Constable [REDACTED]'s assertion that he called Ms. [REDACTED] simply to find out whether [REDACTED] had been served with a subpoena is not believable. [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were still friends. [REDACTED] called [REDACTED] minutes before her father talked to Ms. [REDACTED]. It is Ms [REDACTED]'s evidence that [REDACTED] told [REDACTED] then that she had been served with a subpoena. Had she not, [REDACTED] could have been asked to check when she called back minutes later. As it was, in that call [REDACTED] asked only if Ms. [REDACTED] would speak to her father. Nor did Constable [REDACTED] pose this simple question once he took the phone from his daughter. Instead he embarked on a rather rambling twenty minute conversation.

One must also wonder what possible motive Ms [REDACTED] would have for fabricating this story. I can think of none. I find then on the balance of probabilities that Constable [REDACTED] did tell her that a person served with a subpoena did not necessarily have to attend court. I accept Ms. [REDACTED]'s evidence that he did not specifically mention [REDACTED] and it is clear that he did not speak to her directly. Still I note that [REDACTED] was a minor and was still residing with her parents. Had Ms. [REDACTED] believed him, Constable [REDACTED] would have been safe in assuming that she would pass the misinformation onto her daughter so that [REDACTED] could

be saved the stress of a court appearance. I find then on a balance of probabilities that Constable [REDACTED] conveyed this misinformation hoping that it would be relied on and that [REDACTED] would not attend his daughter's trial.

I find that count 2 as it relates to the witness [REDACTED] [REDACTED] is substantiated.

[REDACTED] also approached Constable [REDACTED] in the lobby at the courthouse and reported that Constable [REDACTED] had contacted his son, [REDACTED] and told him he did not need to attend court even though he had been subpoenaed.

Sergeant [REDACTED] interviewed [REDACTED] on October 27, 2010. [REDACTED] said that a couple of months before the trial in this matter Constable [REDACTED] called and asked him to come over to his house to discuss what had happened the night of the accident. He says he attended the [REDACTED] residence and answered the questions put to him by Constable [REDACTED]. He was there about ten minutes. These were the only times he spoke to Constable [REDACTED] about the matter. He had not been served with a subpoena at that point and there was no discussion about that or about whether he should attend court.

Sergeant [REDACTED] interviewed [REDACTED] on the 12th of November 2010. Mr. [REDACTED] expressed annoyance at the fact that Constable [REDACTED] had initially contacted [REDACTED] who was only 18, without first seeking his permission. He called Constable [REDACTED] about this and received an apology. Mr. [REDACTED] described some further contacts with Constable [REDACTED]. He did not repeat his allegation that [REDACTED] had told him that Constable [REDACTED] said that [REDACTED] did not have to attend court even if he was subpoenaed. Sergeant [REDACTED] did not ask him about this nor reminded him about his conversation with Constable [REDACTED] on the day of the trial.

I find then that there is no evidence at all to support the suggestion that Constable [REDACTED] tried to dissuade [REDACTED] from attending as a witness at [REDACTED]'s trial.

I find that count 2 as it relates to the witness [REDACTED] is not substantiated.

Count three: Did Constable [REDACTED] conduct himself in a discreditable manner by swearing at Constable [REDACTED] and witness [REDACTED] at the Richmond Courthouse on May 6th, 2010.

It is common ground that Constable [REDACTED] was upset by the way the trial proceedings on May 6th unfolded. The trial was conducted in a very small courtroom. There were only two rows of seats. At the conclusion of the trial, Constable [REDACTED] was sitting next to Constable [REDACTED]. As he rose to leave, Constable [REDACTED] says Constable [REDACTED] said, "You're a fucking liar." He made the comment under his breath but because of the close quarters, Constable [REDACTED] had no problem hearing him. Constable [REDACTED] says he was upset and acknowledges the profanity but says his comment was "Fucking liars." He says this was not directed to anyone in particular. It was suggested that RCMP Corporal [REDACTED] overheard this exchange but when he was interviewed on November 16th 2010 he could only say that Constable [REDACTED] appeared angry and agitated and that he muttered something that caused Constable [REDACTED] to look upset.

Constable [REDACTED] in his statement sounded baffled about why Constable [REDACTED] would accuse him of lying. He reviewed the evidence he had given and said though there were several questions he had been unable to answer, he had been candid about that. In his interview, Constable [REDACTED] said that he thought several of the crown witnesses had lied. He said that he refused to sit beside Mr [REDACTED] because he had completely embellished what he had to say. Both these observations would tend to give Constable [REDACTED]'s version of events some credence.

Sergeant [REDACTED] in his interview with Constable [REDACTED] noted that there is quite a difference between, "You're a fucking liar," and "Fucking liars." That is true if indeed those were the exact words uttered. I note, however, that more often than

not, those who hurl insults do not follow formal grammatical conventions. Had Constable [REDACTED] intended to insult Constable [REDACTED] (a fact he denies) he would very likely have simply said, "Fucking liar!" From that Constable [REDACTED] would undoubtedly have understood that he meant, "You're a fucking liar." On the basis of the materials referred to in the Final Investigative report I am unable to conclude on a balance of probabilities that Constable [REDACTED]'s comment was directed specifically to Constable [REDACTED]. It may well have been a general expression of annoyance and frustration as he says. It was also a comment made under his breath or muttered to use Corporal [REDACTED]'s description. It was not, in my view, a misdeed that would amount to discreditable conduct.

It is also alleged that Constable [REDACTED] swore at Mr. [REDACTED] when he passed by him in the lobby after the conclusion of the trial. Having read the witness statements I am satisfied that this did not happen. After the trial was completed and a guilty verdict was entered against [REDACTED] [REDACTED] Constable [REDACTED] passed Mr. [REDACTED] in the lobby outside the courtroom and said, "I hope you're happy." This upset Mr. [REDACTED] and he responded in an obscene manner. Both Constable [REDACTED] and [REDACTED] confirm that this is what happened.

I find that neither of the incidence alleged in count three have been substantiated.

Notice of Next Steps

[1] As required by s. 117(8) of the *Police Act*, I hereby provide notice to Constable [REDACTED] as follows:

- (a) For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate the allegation that Constable [REDACTED] attempted to obstruct by attempting to dissuade witness [REDACTED] from attending to give evidence at the traffic hearing trial of [REDACTED]. This

constitutes misconduct and requires the taking of disciplinary or corrective measures;

- (b) A prehearing conference will be offered to Constable [REDACTED]
[REDACTED]
- (c) Constable [REDACTED] [REDACTED] has the right pursuant to s. 119 to request permission to call, examine or cross-examine witnesses at the discipline proceeding, provided such request is submitted in writing within 10 business days following receipt of this notice of decision.
- (d) Constable [REDACTED] [REDACTED] retired from the [REDACTED] Police Department in September 2010. Section 127 of the Police Act provides that if a finding of misconduct is made against a former member the disciplinary authority must apply the provisions of section 126(2) and (3) [imposition of disciplinary or corrective measures] in respect of the matter as if the former member had continued to be a member. Accordingly, the range of disciplinary or corrective measures being considered include:
- a. Requiring Constable [REDACTED] [REDACTED] to undertake specified counselling or treatment;
 - b. Reprimanding Constable [REDACTED] [REDACTED] in writing;
 - c. Reprimanding Constable [REDACTED] [REDACTED] verbally; and
 - d. Giving Constable [REDACTED] [REDACTED] advice as to his conduct

Dated at Surrey, British Columbia this 2nd day of August, 2011.

Hon. Carole D. Lazar, Discipline Authority

