

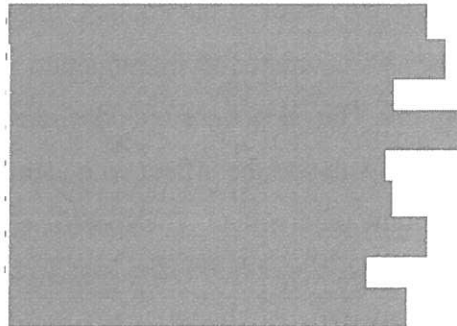
IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, C. 367

AND

IN THE MATTER OF A REVIEW OF AN  
ALLEGATION OF MISCONDUCT AGAINST  
[REDACTED]  
OF THE VANCOUVER POLICE DEPARTMENT

**NOTICE OF DECISION**

TO:



c/o Vancouver Police Department  
Professional Standards Section

AND TO: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

AND TO: Mr. Clayton Pecknold  
Police Complaint Commissioner

AND TO: [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section

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**INTRODUCTION**

The incident which gives rise to these proceedings took place in the early hours of February 26<sup>th</sup>, 2018 in a [REDACTED] at the [REDACTED] in the [REDACTED]. A security guard

employed by [REDACTED] came upon a number of men she believed were drinking. She saw a blue cooler in front of the men. She asked them to leave. One of the men, [REDACTED] identified himself and the group as members of the Vancouver Police Department (VPD). He said words to the effect that "the other guy doesn't mind us as long as we clean up after ourselves.". The guard reiterated her initial demand that they leave. They left. The security guard then called the Vancouver Police Department to report the incident.

In this review under S.117 of the Police Act RSBC 1996 C.367 (Act) is related to the conduct of the members who were present. The issue is whether their conduct appears to constitute *Discreditable Conduct* under S.77(3)(h) of the Act.

On March 8, 2018 the VPD reported the incident to the Office of the Public Complaint Commissioner (OPCC). On March 20<sup>th</sup>, 2018 the OPCC ordered an investigation. [REDACTED] was appointed to conduct the investigation. The allegations included one count of *Discreditable Conduct* against [REDACTED] who was the officer who identified himself and the six to eight officers who were still at that time unidentified. The specific allegations of *Discreditable Conduct* involved consuming beer in a parking lot or being present knowing that others were doing so and thus behaved in a manner they knew or ought to have known would discredit the VPD.

[REDACTED] completed his investigation on February 1, 2019. He submitted the report to [REDACTED]. On February 19, 2019 [REDACTED] found that the allegation of misconduct was not substantiated. On March 19, 2019 the OPCC appointed me to review the FIR related to the material. It is my duty to make my own decision on the matter. I am governed by S.117 of the Act.

## **EVIDENCE**

I will review the evidence in more detail This matter came to the attention of the VPD after [REDACTED] a security officer called the VPD and reported that she had encountered a group of men who identified themselves as members of the VPD. She said they were drinking beer. [REDACTED] identified himself as a Vancouver police officer and stated that the off-duty

officers liked to hang out there. The security guard was not impressed and asked them to leave. She said she saw open cans of what appeared to be beer and a large cooler. When she asked them to leave they packed up their belongings and left in different vehicles. She gave a written statement that was audio recorded. She said she noticed two to four cans with labels appearing to match Sleeman's beer and she saw two of the men pour their drinks on the ground before leaving. [REDACTED] had told her that "the other guy doesn't mind as long as we clean up after ourselves". She said that "she was not the other guy" and told the group to leave. In fact she confirmed with a colleague who told her that he understood they were off-duty police officers and that security personal generally ignore them. The officer [REDACTED] confirmed that statement wherein he stated that he saw the men on other occasions with beers in their hands and on two occasions he was shown a police badge. In his statement he said he just "let it be". It was not until September that the remaining officers were identified. They were [REDACTED]  
[REDACTED]  
[REDACTED]

It is not in dispute that [REDACTED] was the spokesperson for the group. He gave his statement. He said that he could not recall what the other members were specifically drinking although he did say that they were all drinking non-alcoholic beverages with one exception.

The officers gave statements. I will review each of them. [REDACTED] stated that he was not drinking alcohol. He remembered there was beer, sparkling water and gatorade in the cooler but he was not at all certain what others were drinking. [REDACTED] said he was responsible for stocking the cooler and cleaning up the garbage. As well he was responsible for monitoring the contents of the cooler and re-supplying it with beer or non-alcoholic drinks. He went on to say that the group had a debit card and a supply of cash that was used for this purpose. While he said he could not remember whether or not he bought Sleeman beer for the cooler on that particular occasion he did provide a receipt that revealed that he bought twelve cans of beer (not Sleeman) on February 25<sup>th</sup>. [REDACTED] said he was drinking gatorade when [REDACTED] approached the group but admitted to drinking one can of beer before she arrived. He said the cooler typically contained cans of beer, sparkling water, gatorade and pop.

In his statement, [REDACTED] denied that he was drinking beer and could not recall whether anyone else was as well. Similarly, [REDACTED] said that he did not recall drinking any alcohol but was instead drinking coke. He went on to say that the cooler invariable would contain beer, gatorade, coke or iced tea. [REDACTED] also said that there were various cans in the cooler including beer, gatorade and pop. In his statement [REDACTED] said that he was drinking sparkling water. [REDACTED] said that he was not a beer drinker and did not recall seeing any other alcoholic beverages that night although the cooler usually had beer, pop, gatorade and other drinks.

### THE LAW

The Law is not in dispute. This review is governed by S.117 of the Act. This section states that it is my duty to access whether "the conduct of the member... appears to constitute misconduct". See S.117 (9). My decision is based on a review of the FIR and other material that has been provided. It is common ground that it is not my function to hear witnesses or to call additional evidence. This review under S.117 is commonly referred to as a paper based review. As well it should be noted that as a reviewing Judge I have no appellate role from any previous finding. Nor is it my duty to determine the correctness of an earlier finding. S.117(1)(d) states that the retired Judge conducting the review is to "make her or his own decision on the matter". Accordingly I have made my own assessment as to whether the police conduct here appears to "constitute misconduct".

### ANALYSIS

*Discreditable Conduct* is defined under Section 77(3)(h) of the Act. It is as the words imply "conduct that a member knows or ought to know would likely bring discredit on the police department whether the officer is on or off-duty". The *Discreditable Conduct* in this case relates to the officers consuming beer in a parking lot. The second allegation of *Discreditable Conduct* relates to the officers driving off with open cans of beer in their vehicles. Thus from a plain reading of the section it is clear that the evidence must satisfy two elements. First, the member's apparent conduct would tend to damage the reputation of the municipal police department to which the member belongs in the eyes of reasonable and informed members of the public and

second, that the member was either subjectively aware of their conduct would have this tendency or engaged in the conduct in question in circumstances where that tendency was objectively obvious.

The evidence here is not in dispute. A number of off-duty members of the VPD met on a somewhat regular basis at the parking lot in question to socialize after shifts. They collectively owned a cooler that was stocked with drinks, including beers. It is not in dispute that the members were aware that the cooler was stocked with beer.

As far as the events of the evening in question are concerned the evidence is not entirely clear. [REDACTED] admitted to the investigator that he had one beer before the security guard arrived. [REDACTED] said she saw cans with labels that she thought were consistent with Sleeman beer. She could not actually read the labels. Thus her evidence falls short from any conclusion that [REDACTED] or any other members were drinking beer or any type of alcohol when she encountered the group. [REDACTED] was aware that another member was drinking beer. However he could not say who it was. It is clear that it was [REDACTED]. In examining the evidence of the remaining officers it is clear that they were aware that the cooler contained beers. [REDACTED] could not remember whether the [REDACTED] contained any beer on that night however they did acknowledge that it had been stocked with beer on previous occasions.

The issue here is whether the conduct of the officers falls within S.77(3)(h). I agree with retired Judge Pitfield in *the matter of Constable .... of the Vancouver Police Department, August 11, 2010 (OPCC File 2009-4719)* wherein he stated:

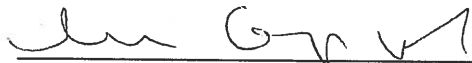
The concept of Discreditable Conduct covers a wide range of potential behaviors. The test to be applied is primarily and objective one. The conduct in question must be measured against the reasonable expectation of the community.

Retired Judge Pitfield was dealing with a case involving an off-duty officer who had been accused of impaired driving.

There is no doubt that [REDACTED] consumption of beer was a breach of the Liquor Control and Licensing Act, rsbc 1996 C.267 (LCLA). In a relative sense the violation is minor. However the real question in this case is, is it so minor that it would not fall below the reasonable expectation of the community. [REDACTED] violation of the LCLA Act, was certainly at the lower end of the spectrum in terms of unlawful possession and consumption of liquor. Certainly reasonable members of the public may rightly consider it disreputable and hypocritical of the police to flout the laws they are tasked with enforcing, no matter how minor the violation. The evidence in this case is not conclusive in so far as the conduct of each member is concerned. I cannot conclude that other than [REDACTED], who candidly admitted to the investigator that he had one beer before the security guard arrived, that any of the remaining officers had been drinking beer. In fact most denied it. Certainly I cannot conclude from [REDACTED] evidence that any members were drinking beer. I am mindful of the fact that the attendance at the parking lot was a more or less regular affair and that joint funds were used to purchase beer, snacks and pop. The record establishes that only one of them drank beer. A reasonable well informed member of the public may well consider that there is nothing wrong with a group of off-duty police officers unwinding in this fashion.

I am troubled by the facts particularly the perception that the off-duty officers appear to flout the law by consuming beer contrary to the LCLA. Certainly ordinary members of the public would not be accorded the same right. Certainly the conduct of the officers albeit off-duty sends a wrong message to reasonable thinking members of the public. However, in the final analysis the evidence here is somewhat inconclusive. I find that the conduct of the members meets the first criterion for *Discreditable Conduct* but not the second. Clearly the conduct of the members in this case would tend to harm the VPD's reputation in the minds of at least some reasonable and well informed members of the public. However I am not satisfied that any of the members subjectively knew this to be the case. Certainly none were asked directly. In any event I do not find that their conduct was so egregious as to objectively discredit the VPD.

In coming to my conclusion I certainly do not condone the pattern of the gatherings of [REDACTED]  
[REDACTED] These should not continue. As well a factual basis not that far removed from this one  
may well have supported a finding of misconduct. However based on the evidence as a whole  
my finding is that the decision falls short of making a finding of *Discreditable Conduct*.



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**The Honourable Wally Oppal, Q.C.**

This 4<sup>th</sup> day of April, 2019

