

CONCLUSION OF PROCEEDINGS

Pursuant to s.120 (16) of the *Police Act*, RSBC 1996, c.367

OPCC File: 2019-15763
August 06, 2019

To: [REDACTED] (Member)
c/o Nelson Police Department
Professional Standards Section

And to: The Honourable Judge Mr. Wally Oppal Q.C., Ret'd (Discipline Authority)
Retired Judge of the Court of Appeal of British Columbia

And to: [REDACTED] (Pre Hearing Conference Authority)
[REDACTED]
Professional Standards Section

And to: Chief Constable Paul Burkhart
c/o Nelson Police Department
Professional Standards Section

On January 15, 2019, the Office of the Police Complaint Commissioner received information from the Nelson Police Department regarding an incident which occurred on September 8, 2018, involving [REDACTED].

According to the Nelson Police Department, on September 8, 2018, [REDACTED] and his common law partner attended a barbecue with friends. [REDACTED] was off duty at the time and both he and his partner consumed alcohol while at this barbecue. At some point during the evening, [REDACTED] left the barbecue and returned home while his partner remained with friends. During the course of the evening, [REDACTED] partner sent him several text messages wanting him to re-join her. [REDACTED] eventually attended a pub where his partner was sitting with friends, walked up to her, gave her "the finger" then left and returned home.

It was reported that [REDACTED] returned home angry and proceeded to throw laminate flooring, underlay, a coat rack and a picture frame out the front door.

Several hours later, [REDACTED] partner returned home and became angry when she saw the items thrown outside. As a result, she went into the house, woke [REDACTED] and attempted to drag him from the bed. This action resulted in [REDACTED] becoming angry

and he pushed his partner away. He then punched two holes in the wall of the bedroom. [REDACTED] subsequently left the house which was then locked behind him by his partner. [REDACTED] immediately returned to retrieve some clothing; however, his partner refused to let him back into the residence, at which point he forced open the door, damaging the door and frame.

[REDACTED] partner was fearful and as a result called 911 and then hung up the phone. Two Nelson Police Department officers attended the residence. The two officers conducted an initial investigation at the scene and eventually [REDACTED] was taken to stay with a family member.

The RCMP were appointed to conduct an external *Police Act* investigation. [REDACTED] conducted an investigation into this matter and on May 21, 2019, he submitted the Final Investigation Report to the external Discipline Authority.

In the report [REDACTED] identified the following allegation of misconduct:

That on September 8 and 9, 2019, [REDACTED], committed *discreditable conduct* pursuant to section 77(3)(h) of the *Police Act* when he attended a pub where his partner was sitting with friends, walked up to her, gave her "the finger" then left. He then returned home angry and proceeded to throw laminate flooring, underlay, a coat rack and a picture frame out the front door.

On May 27, 2019, [REDACTED], as the Discipline Authority, issued his decision pursuant to section 112. In his decision, [REDACTED] determined that [REDACTED] did not commit *Discreditable Conduct* pursuant to section 77(3)(h).

On June 24, 2019, PCC Pecknold appointed a retired judge to review this matter pursuant to section 117(1) of the *Police Act* as he considered there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect. Therefore, pursuant to section 117(4) of the *Police Act* and based on a recommendation from the Associate Chief Justice of the Supreme Court of British Columbia, PCC Pecknold appointed retired judge Wally Oppal, Q.C., to review this matter and arrive at his own decision based on the evidence.

On July 16, 2019, upon review of the report and the evidence and records referenced in it, retired judge Mr. Wally Oppal, Q.C., determined that the conduct of [REDACTED] appeared to constitute misconduct. Subsequently, pursuant to section 117(9), Mr. Oppal became the Discipline Authority in respect of this matter. Mr. Oppal offered a pre hearing conference to [REDACTED], and the proposed disciplinary or correctives measures included "*requiring the officer to undertake specified counselling or treatment, requiring the officer to participate in a specified programme or activity, reprimanding the member in writing or reprimanding the member verbally, or giving the member advice as to his conduct*".

Pursuant to section 135(1) of the *Police Act*, any time after an investigation has been initiated into the conduct of a member or former member of a municipal police department, the Police Complaint Commissioner may designate a senior officer of another municipal police department to exercise the powers and duties of an external Discipline Authority, if the Commissioner considers it necessary in the public interest.

On July 23, 2019, PCC Pecknold appointed [REDACTED] from the [REDACTED] [REDACTED] as Discipline Authority, to exercise the powers and perform the duties of the Prehearing Conference Authority in the prehearing conference in this matter.

A prehearing conference was held on August 1, 2019 before [REDACTED] as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

Allegation #1: *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.

1. Specified Counselling or Treatment – specifically, you must:

- a. [REDACTED]
[REDACTED]
- b. [REDACTED]
[REDACTED]
[REDACTED]

Compliance of the above measure, (a) and (b), in the form of proof of attendance, must be reported to Chief Constable Paul Burkhart, or his designate, when requested, or at minimum once per month until December 20, 2021.

2. Written Reprimand

A report following the prehearing conference was received at our office on August 2, 2019. In reviewing the investigation conducted by [REDACTED] and considering all the relevant factors in this case, the Prehearing Conference Authority has appropriately considered the aggravating and mitigating factors pursuant to section 126.

The disciplinary measure(s) imposed at the prehearing conference were both correct and appropriate with respect to the circumstances.

Therefore, the agreement reached at the prehearing conference is approved and the resolution is final and conclusive. Our file with respect to this matter will be concluded upon receipt of

confirmation that in accordance with *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.



Ross Poulton
Investigative Analyst

cc:

[REDACTED]
[REDACTED]
[REDACTED], registrar