IN THE MATTER OF THE POLICE ACT R.S.B.C. 1996, C. 367 AS AMENDED AND IN THE MATTER OF A REVIEW ON THE RECORD ORDERED WITH RESPECT TO CONSTABLE BRAD MEYER OF THE VICTORIA POLICE DEPARTMENT

NOTICE OF ADJUDICATORS DECISION

TO: Constable Brad Meyer

AND TO: Mr. Kevin Woodall, Counsel for Constable Meyer

AND TO: Mr. Trevor Martin, Commission Counsel

AND TO: Inspector Colin Brown, Discipline Authority

AND TO: Mr. Clayton Pecknold, Police Complaint Commissioner

Background:

On May 14th, 2020 the Police Complaint Commissioner ordered a review on the record limited to the disciplinary and corrective measures that had been imposed on Constable Meyer as a result of a finding that he had 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 department.

The misconduct, which Constable Meyer has admitted, occurred on February 13, 2019. There had been a significant snowfall and his wife's car had been buried by the snowplough. Meyer was clearing the snow off the car and as he did so, he was throwing it onto the travelled section of the road. Several witnesses were of the view that this growing strip of snow on a road that had been ploughed and was otherwise free of snow was a hazard. When they tried to raise this point with Meyer, they say that he resorted to yelling and swearing at them.

On April 5, 2019, the Police Complaint Commissioner issued an order for investigation of this complaint pursuant to Division 3 of the *Police Act*. On November 5th, 2019, Sergeant Niederlinski, who had been assigned to investigate the incident, submitted his Final Investigative Report. After reviewing this report, Inspector Brown, the Discipline Authority, substantiated a single count of misconduct. He reviewed what he considered

to be the aggravating or mitigating factors and the disciplinary and corrective measures that had been imposed on Meyer as a result of previous findings of misconduct. He concluded by recommending dismissal.

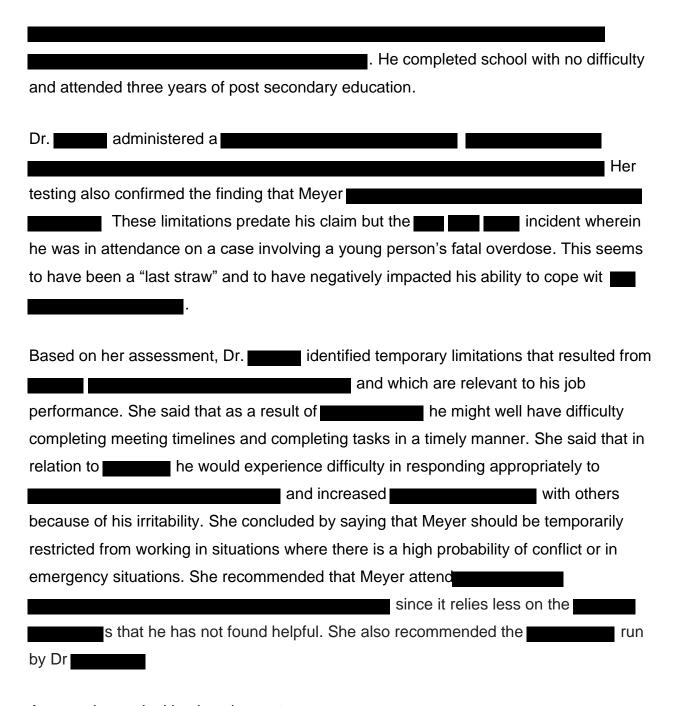
Upon receiving this decision, Meyer exercised his right pursuant to Section 136 and 137 of the *Police Act* and requested a public hearing. The Commissioner having noted that it was not the finding of misconduct but only the discipline imposed that was in issue considered the factors set forth in Section 137(2)(a) and (b) and determined that the matter could be dealt with by way of a Review on the Record. On May 14, 2020 I was appointed to conduct the review.

Section 141(4) application:

In arriving at his conclusion that the appropriate disciplinary and corrective measure in this case was dismissal, Brown, the Discipline Authority, considered Meyer's history but did not reference a finding of neglect of duty dating back to 2008 since he was of the view that those records would be expunded pursuant to section 180(8) of the *Police Act*. Neither did he consider two incidents where, while off duty, Meyer exhibited angry behaviour resulting in complaints being filed in 2015 and 2016. On November 10th, 2020, however, Brown filed an application under section 141(4)(a) seeking to admit particulars of these allegations as new evidence. The special circumstance referenced in the application was the Discipline Authority's understanding that the member's counsel would be attributing the three misconduct allegations that arose between September 2018 and February 2019 to Meyer's Since Meyer's WorkSafe BC claim was backdated to May 2018, Brown tendered the incidents of 2015 and 2016 to rebut the suggestion that the recent displays of bad temper arose as a result of some triggering event that occasioned an injury at that time. I adjourned Brown's application since it seemed better dealt with at a point where more information about the was available. Having now had a chance to read Dr. assessment which outlines the stressors Meyer has encountered and says that he would have met the by 2005, it is evident that the incidents referred to in the Discipline Authority's application

his application is dismissed. and Active WorkSafe B.C. claim: Meyer was placed on administrative leave on a same as a result of an incident that occurred that day. Shortly thereafter, he applied for WorkSafe BC benefits which resulted in a finding that he was and underwent suffering from This designation was backdated to May 4th, 2018. Meyer was not represented by counsel at the discipline hearing and although Sergeant Plater, the union representative who appeared on his behalf, tried to deal with this designation in his submissions he was only able to provide general information about how _____ The Discipline Authority was never privy to any information regarding the underlying factors that led to this diagnosis nor was he provided with any evidence about if or how this illness might have contributed to Meyer's behaviour on February 13th, 2019. Since it seemed likely that WorkSafe BC would have relevant evidence about Meyer's on July 20th, 2020 I made an order pursuant to Section 141(4) admitting, as part of the record, those items in Meyer's WorkSafe BC file that might be pertinent to this inquiry as well as a letter from the that they had referred him to. Pursuant to that order the letter and have been admitted as part of the record. Dr. submitted a brief report on February 25th 2019. She found that Meyer suffered from It was her view that he had probably met the criteria for since 2005. On January 27th, 2020 Dr. did a more thorough assessment report which canvassed the issues facing Meyer in more detail. Dr. reported that in her interview with Meyer, he explained that he had been

postdate and would not be helpfully included on this review. That portion of



Aggravating and mitigating circumstances:

Section 126 lists the range of disciplinary and corrective measures that can be imposed as a result of an officer's misconduct. Section 126(2) says that aggravating and mitigating circumstances must be considered and sets forth a number of factors that might be relevant.

a) the seriousness of the misconduct

With respect to the initial complaint, had Meyer engaged in a reasonable conversation with the attending officers and then remedied the situation there would have been no further repercussions. Cst. said there had been a "huge snowstorm that weekend" and everybody had been shoveling their driveways. For that reason, he thought the call was likely a minor matter of someone shoveling their driveway, like everyone else was. In fact, this was only one of three such reports of residents shovelling snow onto the road that he was setting out to deal with when he stopped to speak to Meyer. He said that he expected to simply say "hey, let's stop doing this, get the snow off (the road)." Had Meyer complied, would have moved on. In the unlikely event that the behaviour had ever been brought to the attention of his department, I do not believe a discipline authority would substantiate a finding of misconduct. Meyer said when he began excavating his wife's car from the snowbank that had been created by the plough, he believed that the snow he was throwing on the road would melt. Weather records for February 13th, 2019 show that the temperatures in Victoria that day ranged from 0° to 3° so this may not have been an unreasonable assumption. That being said, the three civilian witnesses were of the view that the snow that Meyer had spread would not melt in a timely manner and that while it remained on the road, it created a hazard for passing traffic. Cst. said the main concern she had was that there were chunks of ice mixed with the snow that Meyer was distributing on the road. She said that she and worried that these might damage the tires of passing vehicles and cause an accident. They would have been satisfied if Meyer had cleared away these chunks. Meyer did, eventually, clear the roadway but not before creating a dramatic scene. It was his unreasonably angry response throughout the whole incident that resulted in it being reported to his department and which gave rise

spoke to him about his concerns and described Meyer's response as indifferent and gruff who was house sitting at the residence next door to Meyers said he thought Meyer was," a *little pissed off*", he waved his

to the present disciplinary hearing.

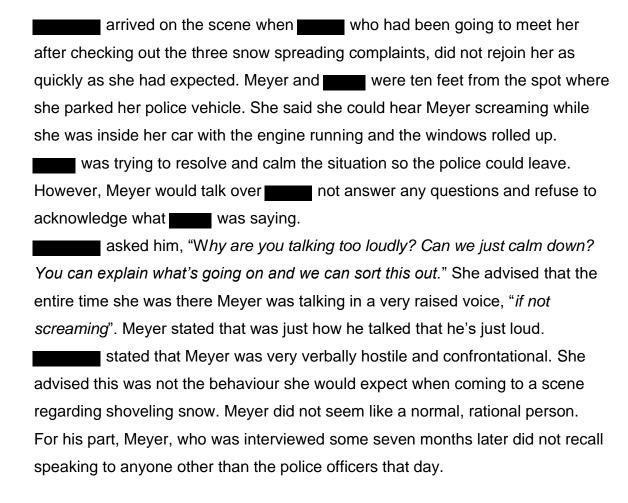
shovel and yelled "fuckin asshole" at one of the speeding cars." said that she observed Meyer swearing at cars and telling them to slow down. He used the word "fuck" a lot. At one point, a red or burgundy minivan was stopped, the occupant of the minivan and the male were yelling at one another. There was "a lot of swearing, a lot of fingering" and the male's behaviour went on for a "prolonged period of time" and "wasn't ceasing". She therefore called police to see if they could conduct a wellness check on him.

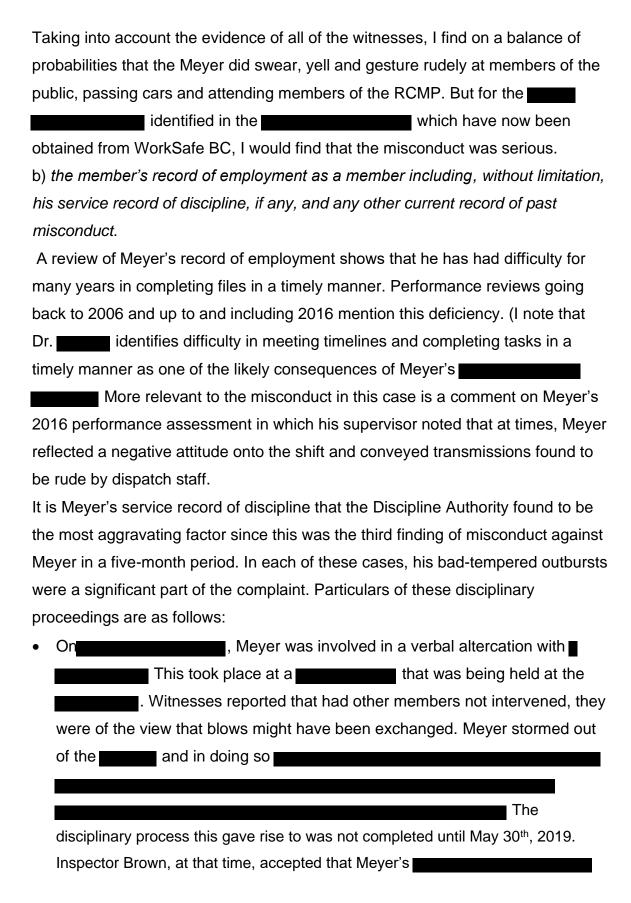
was probably the driver of the va reported that he was driving home with his wife but that he stopped his vehicle and told Meyer he should not be throwing snow on the road, that he might cause an accident, Meyer told him to fuck off. The two men exchanged profanities. later said he could not remember who had started that. There was also an exchange of middle finger gestures and he reported that Meyer said "hey buddy why don't you get out of your car and come say that to my face." said she believes her husband said "fuck you" and then they drove away. The vehicle was on the opposite side of the road from Meyer so this angry trading of insults would have been heard by others in the area. attended the scene in response to the civilian complaints. Things got off to a bad start since he told Meyer that he had received three calls reporting that he had been throwing snow at passing vehicles. Meyer responded with a spirited denial and accused of lying and making this up. (Sgt. Niedrelinski, as part of his investigation, listened to the recordings of the complainants' calls and none of them had said that. He concluded that there had been an error in the notes of the call taker who had entered the information onto the computer assisted dispatch system.) said that Meyer continued his attack and accused him of making up "bullshit." told him he could be arrested for mischief and creating a disturbance at which point Meyer began casting aspersion on his competence as an officer and on the RCMP in general. He said that was the one that was creating a hazard because his cruiser was blocking one of the lanes on the roadway and he had not activated his emergency lights. Another motorist approached with the same complaint but said he did not

return to the cruiser to remedy the matter because it was contrary to training "when someone is yelling at you." Eventually Meyer started clearing the snow off the road.

next observations are significant given the defence position that Meyer's was a factor that contributed to his angry behaviour that day. He said,

I found Meyer's behaviour to be outside the norm. Usually when you approach people, they let you speak, they give an explanation. The aggression and swearing displayed by Cst. Meyer was not normal. Most of the angry people I have dealt with in the past vent and once they've got that anger out, they calm down, they take a breath.... He was not calming down... he was into full aggression and anger and that didn't stop. That just continued throughout the entire experience... nothing I was doing... from identifying myself to giving him options of how we can deal with this problem and giving him solutions, giving him information that he wanted or threatening him with charges was working. Nothing was changing his behaviour.





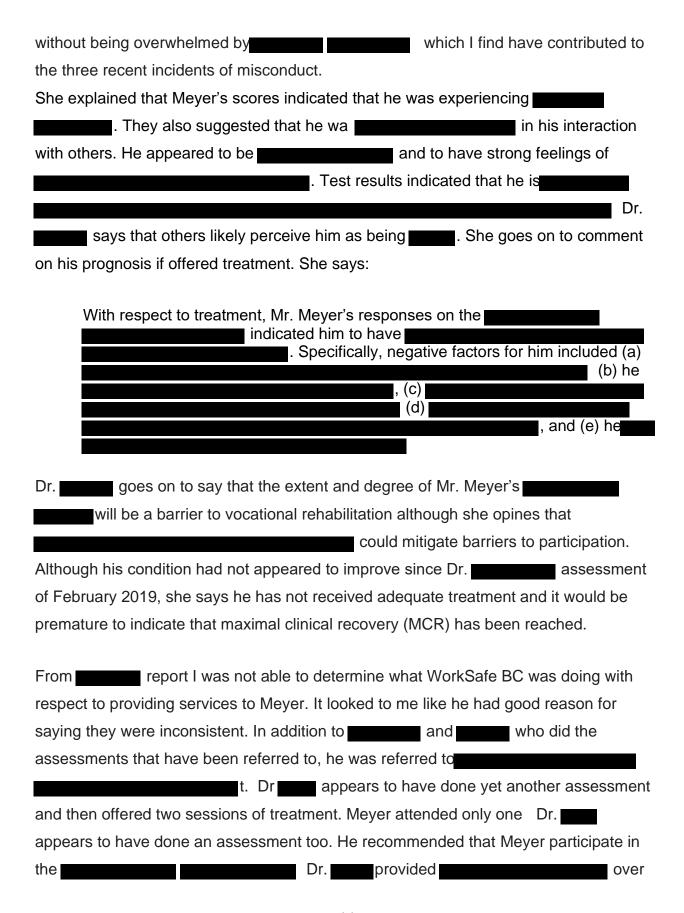
were mitigating factors. He ordered the member to undertake specified counselling or treatment.

• On Meyer, who was off duty at the time, was stopped and investigated by an RCMP officer for excessive speeding. It was Meyer's view that though he may have been speeding he had not been travelling 40km per hour over the posted speed limit and that the officer was overreaching. The officer did not ticket him but instead registered a conduct complaint against him alleging, in addition to the named offence, an allegation that Meyer had acted in an angry and profane manner. The matter was investigated and the Discipline Authority ruled that the excessive speeding amounted to misconduct. The angry and profane manner did not rise to the level of misconduct but was taken into account as an aggravating circumstance.

This allegation was finally disposed of on February 6, 2020 when Meyer received a one-day suspension.

It is Mr. Woodall's submission on behalf of the member, that a leap from a one-day suspension to termination is not consistent with the principle of progressive discipline. This principle, which in British Columbia is often called the step-principle, was discussed in *R v Bush* (D.F), 2006 BCCA 350 (CanLII), where Ryan JA, described it at paragraph 9 as "the principle that is often used to describe the philosophy that sentences should usually increase in moderate steps since a sudden, large increase in the length of a sentence may interfere with the goal of rehabilitation, if that is the focus of the sentence." This line of reasoning is premised on the assumption that if an offender is convicted of a similar or identical offence to one he has been convicted and sentenced for in the past, it can be concluded that the prior sentence was not sufficiently deterrent and so the sentence for the new offence should be increased to focus on specific deterrence. The first requirement when considering the application of the principle then is a finding that the offender has been sentenced for a similar offence in the past. Since the disposition of both of Meyer's cases postdated the misconduct under review here, this principle does not apply.

3) The next consideration is the impact of any proposed disciplinary or corrective measures
on the member and his family and career. If Meyer is dismissed, his career as a police
officer is probably over. It seems unlikely that another police department would entertain an
application for employment. Meyer has no significant employment history in other
occupations and might well have difficulty finding work, particularly work that generated the
kind of income he has made as a police officer. He still has so the
reduction in income that would likely result from a dismissal would cause hardship for the
whole family. Mrs. Meyer has also called the detachment on several occasions expressing
concern about the impact that two years of being under investigation has already had on
Meyer's and by extension, on his family. (Though no details were provided, it
seems likely that Meyer's irritability and bad temper affect his domestic relations as well as
his interactions at work and in the community.) Loss of his job would at best, likely lead to a
continuation of this stressful situation and the resulting symptoms. It might well make it
worse.
d) the likelihood of future misconduct by the member
The Discipline Authority was concerned that in this Police Act matter and in the two
previous cases which have been referred to, Meyer demonstrated an inability to control
his anger. He noted Meyer's lack of contrition, the fact that he showed no insight into
how his behaviour impacted others, his failure to acknowledge the potential risk that he
created to the public, and the fact that he failed to demonstrate any steps that he had
taken to prevent the recurrence of misconduct related to his
He concluded that the likelihood for future misconduct on behalf of Constable Meyer,
particularly conduct which includes anger, to be high.
in the she did for WorkSafe BC, framed this issue in
slightly different terms. Since the analysis and its
are the reason that Meyer is not considered capable of returning
to work at this time, she had been asked to do a
report. If Meyer's and the resulting
cannot be resolved, this would be classified as a permanent disability and retraining or
compensation would be provided. She was then, assessing the likelihood that treatment
would result in improved functioning such that he could successfully return to his job as
a police officer. This would include learning to cope with the stress of the position



four sessions. Again, attendance was an issue. reported that Meyer made some
progress but said his progress would have improved had his attendance been better.
Ms. , an provided another assessment. Meyer reported that
he had trouble establishing rapport which is not surprising given the number of
professionals involved and the extremely short period that they were engaged. After
assessment, Meyer was referred for
Between February 6 th and May 7 th , 2020 Meyer attended all of the12 sessions that
WorkSafe BC had authorized. reported that Meyer appeared to be engaged
and motivated to continue long term. was of the view that
his recovery would likely have been a lengthy process and that he would benefit from
additional moving forward. He noted that Meyer's recovery was
complicated by his ongoing dispute with his employer.
As previously noted, Meyer's emotional state deteriorated after he was placed on
administrative leave and discipline proceedings were initiated. I think that it is
reasonable to expect that the culmination of these three investigations will result in a
significant relief for him and that this will be reflected in his mood. I also note that there
have been recommendations for Those services have been severely
limited for the last nine months because of the Covid-19 restrictions. It is reported that a
vaccination for this virus will soon be available which should mean that the member will
eventually be able to access this form of treatment.
Despite his feeling that he has been treated in a discriminatory and non-supportive
manner by his superiors and some of his colleagues, Meyer is very anxious to return to
work. This should motivate him to take advantage of
recommended.
For these reasons, I find that if and when WorkSafe BC deems that he is able to return
to work, Meyer will present a moderate to low risk of being involved in further
misconduct. Were he to undertake continuing treatment after the resolution of his
WorkSafe BC claim so that he had professional support when stressed, that would
probably result in even a lower likelihood of further

e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence

It is not easy to come up with a conclusive answer to this question. A guilty plea, or in this case, the admission of an allegation of misconduct, is generally construed as an indication that the person takes responsibility for the misdeed. In this case and in the other two investigations involving him, however, Meyer entered a formal admission but then denied particulars raised as part of the allegations. The application he made to WorkSafe BC after the first of these incidents of misconduct, suggests to me that he had identified the fact that he has a problem. I find that since he often seems to blame others for the conflicts he becomes involved in, that application represented progress. There is nothing that a discipline proceeding can do to change the behaviour or attitude of those who come in contact with Meyer so it is imperative that he get help to assist him in dealing with situations that are bound to arise from time to time. He has successfully completed

orkSafe BC and though more treatment is recommended this is a step in the right direction.

f) The degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor contributed to the misconduct

There was no evidence to suggest that the policies, standing orders or internal procedures of the Victoria Police Department or the actions of Meyer's supervisor contributed to the misconduct.

g) The range of discipline and corrective measures taken in similar circumstances
Since I find that shovelling snow onto the road was unlikely, on its own, to ever have
been the subject of an investigation or discipline proceedings, it is the uncontrolled
anger that must be the focus of any disciplinary or corrective measures to be imposed.
A review of other decisions under the *Act* demonstrates that the disciplinary or
corrective measures that have been imposed for this type of behaviour range from a
verbal reprimand up to a two-day suspension.

<u>OPCC File 2017-14184</u> An off-duty member lost his temper when delayed in a police check stop. He yelled profanities and derogatory comment at the members who were conducting the check stop. He received a verbal reprimand.

OPCC File 2019-15763 While off duty, a police officer became involved in a dispute with his spouse which lasted for several hours. During that time, he gave her the finger in a public setting, threw laminate floor boards, underlay, a picture frame and a coat rack out their front door. He later punched two holes in their bedroom wall. When she asked him to leave, he did but then broke the door trying to get in again to retrieve some clothing. His spouse called 911. The member received specified counselling and a written reprimand for discreditable conduct.

OPCC File 2018-14899 While off duty, a police officer was intoxicated and engaged in a verbal exchange with a neighbour that turned into a physical encounter where he pushed the female neighbor at least twice in the chest area. The disciplinary/corrective measure imposed was a 2-day suspension.

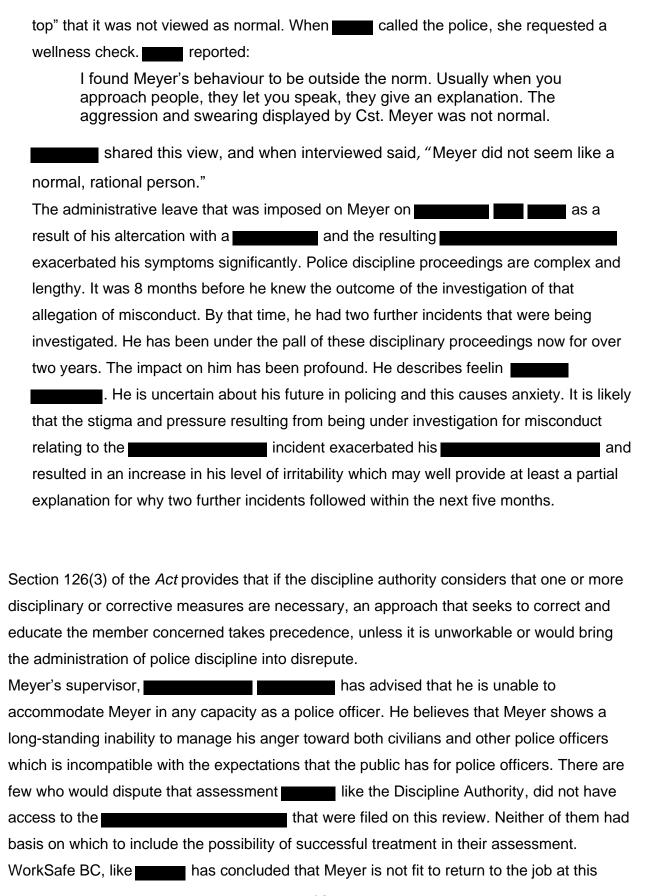
h) other aggravating or mitigating factors:

 The fact that this is the third substantiated incident of misconduct in a very short period of time is an aggravating factor.

Meyer's
are mitigating factors. While they do not excuse his behaviour, they do reduce his mora
culpability. Meyer
Policing is a high stress occupation. His unfortunate may well make
Meyer less resilient than some in the face of the kind of exposure that is common in this
line of work.
During his career as a police officer, Meyer has attended suicide calls, fatal motor
vehicle accidents and violent assaults which have resulted in loss of life or severe
injuries. He still experiences intrusive trauma memories and nightmares arising from
these exposures. In the attended at a domestic dispute where the female partner
She died at the scene.
Meyer was required to contain the site for the next eight hours. He is still bothered by
memories of this incident.

and share the view that Meyer likely met th
r as early as 2005. The upset for him at that time seemed
more related to what he perceived as bullying, harassment and intimidation in the
workplace than it did to traumatic exposure encountered in the community. He
experienced an improvement in symptomology in 2009 with a new supervisor whom he
felt he could trust. Meyer reported that the workplace issues made it harder for him to
manage his reactions to traumatic incidents. Although no details were provided, this
improvement in his work situation seems to have been short lived. While expressing the
view that Meyer's symptomology dated back a decade or more,
agreed that a more recent incident where he was called to deal with a
was probably a "last straw" for him. He remained at the scene
for some time and then had to report the death to the deceased's parents This occurred
on May 4th, 2018. The WorkSafe BC claim which he filed in September was backdated
to this date.
explained that limitations that Meyer would likely experience as a result of his
as follows:
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She itemized the likely limitations he would experience as a result of his as:
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I find that the irritability and increased interpersonal conflict predicted as a consequence o was a significant factor in Meyer's bad-tempered behaviour on February 13th, 2009. It was evident from witness statements that his behaviour was so "over the



time. They are continuing services, however, because as explains, Meyer has not reached the point where they must conclude that no further progress is likely.

The case of *R. v. Collins*, [1987] 1 S.C.R. 265 sets forth the standard which should be applied when trying to determine whether a decision will bring the administration of justice into disrepute. It is equally applicable to the question of whether a given disposition will bring the administration of police discipline into disrepute.

In the Collins case, Dickson C.J. said:

Since the concept of disrepute involves some element of community views, the test should be put figuratively in terms of the reasonable person: would the admission of the evidence bring the administration of justice into disrepute in the eyes of the reasonable person, dispassionate and fully apprised of the circumstances of the case.

Were a reasonable member of the public to be made aware of Meyer's nd the fact that he is currently accessing treatment, it is likely that they would conclude that a dismissal would be premature.

Section 141(9) of the *Act* states that the standard of review under this section is correctness. The Supreme Court of Canada in Dunsmuir v. New Brunswick, 2008 SCC 9, at para. 50 offered guidance in this regard. When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

As previously explained, assessments and reports that had not been available to the Discipline Authority were received into evidence on this review. Having had the advantage of viewing that evidence, I have applied this standard as set out in the Dunsmuir case and find that the decision of the Discipline Authority is incorrect. Having undertaken my own analysis of the question raised on this review I find that the following disciplinary and corrective measures acknowledge the seriousness of the offence and are likely to assure that the conduct does not occur again.

a) the member is to be suspended for two days without pay,

- b) the member shall be required to participate in all counselling recommended and arranged by WorkSafe BC.
- c) If approved by WorkSafe BC for return to work, the member shall be required to take reasonable steps to assure that he has support in dealing with the stresses of his job and in particular shall be required to attend for ongoing supportive counselling with a qualified practitioner or with a provided that this individual or group must be approved by his Department's Human Resources Branch.

Dated at Surrey, British Columbia this 11th Day of December, 2020.

Carole Lazar, Adjudicator

C Lazar