



Office of the
Police Complaint Commissioner

British Columbia, Canada

NOTICE OF REVIEW ON THE RECORD
Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation against
a member of the Abbotsford Police Department**

OPCC File: 2017-13521
June 23, 2020

To: Name withheld (Member)
c/o Abbotsford Police Department
Professional Standards Section

And to: Chief Constable Michael Serr (Discipline Authority)
c/o Abbotsford Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On July 17, 2017, the Office of the Police Complaint Commissioner (OPCC) received information from the Abbotsford Police Department (APD) in relation to a number of incidents involving one of their members which occurred between January 2017 and June 2017.
2. According to the Abbotsford Police Department, it is alleged that on May 2, 2017, the member entered the residence of the member's estranged spouse as the spouse attempted to close the door. It was reported that the member grabbed the spouse's wrist and prevented the spouse from calling the police for assistance by taking phones away. During the interaction, the member is alleged to have pulled the spouse's arm and controlled the spouse physically. Further, the member reportedly locked the door leading to the garage which prevented the spouse from leaving the house. As a result of the altercation, the spouse sustained a significant bruise.
3. Further, on two separate occasions, in January and May of 2017 respectively, the member is reported to have placed GPS tracking devices on the estranged spouse's vehicle.

Clayton Pecknold
Police Complaint Commissioner

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4. Between the dates of January 2017 and June 2017, it is reported that the member followed the estranged spouse and subjected the spouse to unwanted communication. The member received a letter from the estranged spouse's lawyer advising the member to stop any unwanted and inappropriate communication with the estranged spouse. This letter also advised the member to cease entering the estranged spouse's residence when the spouse is not present. It is alleged that the member continued to communicate with the estranged spouse and entered the spouse's residence when the spouse was not present after receiving this letter from the lawyer.
5. The Abbotsford Police Department further advised that there was an ongoing criminal investigation into the conduct of the member and the Criminal Justice Branch approved four *Criminal Code of Canada* charges. The Abbotsford Police Department requested that the *Police Act* investigation into this matter be suspended pending the outcome of the criminal investigation.
6. On July 27, 2017, after reviewing the information forwarded by the Abbotsford Police Department, former Police Complaint Commissioner Lowe ordered an investigation into the conduct of the member pursuant to section 93(1) of the *Police Act*. In addition, the *Police Act* investigation into this matter was suspended to avoid prejudicing the ongoing criminal investigation or prosecution.
7. On July 5, 2018, the suspension of the *Police Act* proceedings was lifted as the OPCC was advised by the Abbotsford Police Department that the member entered a guilty plea to the charge of Assault, pursuant to section 266 of the *Criminal Code*. The member received a conditional discharge and was placed on probation, with conditions, for a period of one year. A Stay of Proceedings was directed by Crown on the remaining three charges.
8. Abbotsford Police Professional Standards investigator, Staff Sergeant Mike Novakowski, conducted an investigation into this matter and on August 8, 2019, submitted the Final Investigation Report (FIR) to the Discipline Authority. The FIR identified additional misconduct: that the member identified themselves as an Abbotsford Police Officer to bar staff to access security video footage recording of the spouse; and the member made queries on PRIME unrelated to duties as a member.
9. On August 20, 2019, following her review of the FIR, Deputy Chief Constable Paulette Freill, as the Discipline Authority, found that five allegations of misconduct appeared to be substantiated. Deputy Chief Freill offered the member a Prehearing Conference.
10. A Prehearing Conference was held on September 16, 2019, and disciplinary/corrective measures consisting of a total of twelve (12) days suspension without pay were agreed to.
11. On September 24, 2019, I rejected the Prehearing Conference agreement and the matter proceeded to a Discipline Proceeding.

Discipline Proceeding and Proposed Discipline

12. On April 9, 2020, following the discipline proceeding, and after considering the available evidence and submissions, the Discipline Authority, Chief Constable Michael Serr, made the following determinations in relation to the allegations:

- i. That on May 2, 2017, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member's assault on the estranged spouse.

Proposed Disciplinary Measure: Two (2) Day Suspension without pay (12-hour shifts).

- ii. Between approximately January and May of 2017, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member placing GPS tracking devices on two family vehicles driven by the estranged spouse.

Proposed Disciplinary Measure: Three (3) Day Suspension without pay (12-hour shifts).

- iii. Between approximately January and June of 2017, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member following the estranged spouse and subjecting the spouse to unwanted communication via texts, emails, notes and telephone calls and entering the spouse's residence when the spouse was not present.

Proposed Disciplinary Measure: One (1) Day Suspension without pay (12-hour shifts).

- iv. On December 30, 2016, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member identifying themselves as a police officer while off-duty in order to facilitate access to a Third Party's security video and obtaining photographs of the estranged spouse from said video.

Proposed Disciplinary Measure: Five (5) Day Suspension without pay (12-hour shifts).

- v. In approximately February and April of 2017, the member committed *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do. Specifically, with respect to the Respondent Member accessing a

police database for non-duty related reasons, in contravention of APD Policy I.F.055 "Use of Police Databases".

Proposed Disciplinary Measure: Five (5) Day Suspension without pay (12-hour shifts).

13. In arriving at his determination, Chief Serr noted that:

- a) At the discipline proceeding for this matter, the member admitted to the five counts of misconduct.
- b) The five substantiated allegations all stem from the member's marital break-up and the fact that the member wanted to save the marriage, was fixated on what the estranged spouse was doing and who the spouse may be seeing. The five substantiated allegations span over a seven-month period and were a cause of significant concern and stress for the estranged spouse.
- c) The member was charged with assault and unlawful confinement, criminal harassment and uttering threats. The member pleaded guilty to assault and received a conditional discharge with probation for one year.
- d) The allegations involve intimate partner violence and controlling/harassing behaviour. This is extremely serious in nature especially for a police officer who understands the impacts of the actions.
- e) This was not a single emotional incident, but rather a sustained series of actions that occurred over more than six months and were planned and deliberate.
- f) The member accepted responsibility for the actions for both the criminal charges and the public trust allegations. The member has sought out the assistance of a psychologist. However, Chief Serr also noted that the conduct occurred while the member was in treatment with a doctor. Chief Serr was concerned that the sessions with the doctor did not prevent any of the conduct.

Decision

14. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.
15. I have reviewed the record of the disciplinary decision and the associated determinations, pursuant to section 138 of the *Police Act*, I have decided that there is not a reasonable basis to believe that the Discipline Authority's determination as to whether misconduct has been proven are incorrect pursuant to section 125(1) of the *Police Act*. I acknowledge that the member has also admitted to the five allegations of misconduct.

16. However, I have concluded that there is a reasonable basis to believe that the Discipline Authority has incorrectly applied section 126 of the *Police Act* in proposing disciplinary or corrective measures in this matter.
17. The Discipline Authority outlined the seriousness of the member's conduct classifying it as "extremely serious in nature especially for a police officer who understands the impacts of [the] actions." The Discipline Authority went on to state, "Any of these allegations, taken separately, would be considered serious. However, assessing them collectively and in the context of intimate partner violence paints an even more troubling picture."
18. The Discipline Authority outlined the aggravating and mitigating factors he considered in reaching his determination, including that matters of intimate partner violence, such as this, are so significant that they would be referred to the police Domestic Violence Unit (DVU). The Discipline Authority noted the member's actions would have been elevated to their DVU had they not been investigated criminally by the Vancouver Police Department (VPD). However, the Discipline Authority only arrived at a two day suspension without pay for the violent aspects of the member's conduct. The proposed discipline of a two day suspension demonstrates that the Discipline Authority, while making reference to the seriousness of the matters, has not accorded appropriate weight to the seriousness of the violent conduct of the member.
19. Furthermore, even though the Discipline Authority commented that the member's actions would have been elevated to their DVU had the VPD not investigated, I find it important to note that the APD were made aware in January of 2017 of the first placement by the member of a GPS tracker. This resulted in the member being spoken to by a supervisor. There was no indication of any DVU notification, despite the Discipline Authority acknowledging the seriousness of this conduct and the importance of combatting domestic violence.
20. In addition, I note that the conduct exhibited by the member, and considered by the Discipline Authority, was sustained and deliberate over a prolonged period of time. Furthermore, the member persisted in the actions of placing a GPS tracker and unwanted communication despite being warned by a supervisor and a lawyer to stop respectively. The Discipline Authority referenced the prolonged period and extreme seriousness of the conduct; however, his decision mitigates the discipline arrived at even after noting the comments made by the sentencing Judge regarding the member's persistent and aggressive communication and the Discipline Authority's own position that the persistent intimidating and controlling behaviour was "troubling." The Discipline Authority noted that the member was desperate to "save [the] marriage" but the member "clearly crossed the line" and the actions met the criminal charge approval standard for harassment. In my view, clearly crossing the line for harassing behaviour in the context of an intimate partner relationship is not reflected in the Discipline Authority's application of section 126 in arriving at the proposed discipline. Therefore, this application is incorrect.

21. The Discipline Authority outlined that the member admitted to the misconduct and accepted responsibility for the actions. However, the Discipline Authority further noted that the conduct occurred while the member was in treatment with a doctor and the Discipline Authority was concerned that the sessions with the doctor did not prevent any of this conduct. In my view, the Discipline Authority has not properly considered that the member's conduct continued to occur, even while in treatment by a doctor, as an aggravating factor.
22. In addition, the Discipline Authority concluded that the likelihood of future misconduct by the member is low due, in part, from the absence of any new allegations of misconduct. I note that the Discipline Authority did observe that the doctor's report he received was nearly two years out of date, it would have been helpful to have a more recent report, and the report did not address the underlying conditions that contributed to the misconduct. However, despite the dated report and its limitations, the Discipline Authority still concluded that the likelihood of future misconduct is low. In my view, the Discipline Authority has not fully considered this application of section 126 as an aggravating factor and it is therefore incorrect.
23. In his decision the Discipline Authority correctly acknowledges the seriousness of domestic violence and the APD's commitment to "aggressively combat and reduce violence against women". The Discipline Authority further outlined the public's expectation that members "who are sworn to protect the vulnerable from intimate partner violence must not engage in it themselves". While I do not challenge the sincerity of these comments, the discipline penalty imposed does not sufficiently acknowledge the trauma and erosion of public trust among victims of relationship violence caused by this officer's actions and the potential chilling effect on future reporting of intimate-partner violence given that the officer remains an Abbotsford Police Officer. This in my view may be reasonably seen to bring the administration of police discipline into disrepute and undermine public confidence in the Abbotsford Police Department.
24. In light of the above, it is my view that the Discipline Authority has incorrectly applied section 126 of the *Police Act* in proposing disciplinary or corrective measures under section 128(1).
25. I have further determined that a Public Hearing is not necessary in this particular matter. There is a thorough and complete record that includes records and evidence from both the criminal investigation and from the *Police Act* investigation. It will not be necessary to examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Further, a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. A Review on the Record is therefore appropriate in these circumstances.

26. I have also determined that a Review on the Record is necessary in the public interest. In determining that a Review on the Record is necessary in the public interest, I have considered several relevant factors, including but not limited to the following:
- a) The nature and seriousness of the complaint or alleged misconduct, especially considering the broader concern of the seriousness of domestic violence and the sustained time period over which this conduct occurred;
 - b) The conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints, or the disciplinary process;
 - c) The disciplinary or corrective measures proposed are inappropriate or inadequate. The measures proposed are not commensurate with the serious, sustained, planned, and deliberate nature of the violent and controlling/harassing behaviour;
 - d) The Discipline Authority's interpretation or application of this Part or any other enactment was incorrect.
27. Accordingly, pursuant to section 141 of the *Police Act*, I am arranging a Review on the Record. As I have determined that the only reasonable basis to believe that the Discipline Authority was incorrect was his application of section 126 in proposing disciplinary or corrective measures, the Review on the Record will be confined to the issue of disciplinary or corrective measures.
28. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or the service record of the member.
29. Pursuant to section 141(5) of the *Police Act*, the member, or agent or legal counsel, may make submissions concerning the matters under review.
30. Pursuant to section 141(6) of the *Police Act*, the Police Complaint Commissioner or his commission counsel may make submissions concerning the matters under review.
31. Pursuant to section 141(7)(b) of the *Police Act*, the Adjudicator may permit the Discipline Authority to make submissions concerning the matters under review.
32. It is alleged that the member committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
- i. That on May 2, 2017, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member's assault on the estranged spouse.

- ii. Between approximately January and May of 2017, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member placing GPS tracking devices on two family vehicles driven by the estranged spouse.
 - iii. Between approximately January and June of 2017, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member following the estranged spouse and subjecting the spouse to unwanted communication via texts, emails, notes and telephone calls and entering the spouse's residence when the spouse was not present.
 - iv. On December 30, 2016, the member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is conducting oneself in a manner that the member knew, or ought to have known, would be likely to bring discredit on the municipal police department. Specifically, with respect to the Respondent Member identifying themselves as a police officer while off-duty in order to facilitate access to a Third Party's security video and obtaining photographs of the estranged spouse from said video.
 - v. On February 27 and April 24, 2017, the member committed *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do. Specifically, with respect to the Respondent Member accessing a police database for non-duty related reasons, in contravention of APD Policy I.F.055 "Use of Police Databases".
33. As this matter involves allegations of a sensitive nature the name of the member has been withheld from this Notice to protect the identity of the victim and any minor children.

THEREFORE:

34. A Review on the Record is arranged pursuant to section 141 of the *Police Act*.
35. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honorable David Pendleton, Retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 23 day of June, 2020.

A handwritten signature in blue ink, appearing to read 'Clayton Pecknold', is written in a cursive style.

Clayton Pecknold
Police Complaint Commissioner