

**REVIEW ON THE RECORD  
DECISION**

**PURSUANT TO SECTION 141 POLICE ACT, R.S.B.C. 1996, c. 267**

In the matter of a Review on the Record into  
a Registered Complaint concerning

**Constable Neil Logan (#2787)**  
of the Vancouver Police Department

To: Constable Neil Logan, Vancouver Police Department ( the “Member”)  
And to: Chief Constable Adam Palmer, Vancouver Police Department  
And to: Mr. Clayton Pecknold, Police Complaint Commissioner ( the “Commissioner”)  
And to: Mr. Kevin Woodall, Counsel for the Member (“Counsel for the Member”)  
And to: Mr. Greg Delbigio, Counsel to the Commissioner (“Counsel to the Commissioner”)  
And to: Supt. Steve Eely, Discipline Authority, Vancouver Police Department ( “Discipline Authority”)  
And to: Ms. Alyssa Le Blevet (the “Complainant”)

Review hearing date: October 6, 2020, Vancouver B.C.

Decision date: November 10, 2020

Place: Victoria, B.C.

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**Executive Summary**

This Review has concluded that the decision of the Discipline Authority was incorrect, in part. The decision was incorrect in assessing the credibility of the various witnesses noted in the Final Investigation Report. It was also incorrect in evaluating the acts of misconduct alleged with respect to the Member involving multiple assaults on the Complainant.

The review finds that the Member committed Discreditable Conduct by shattering the front windshield of his vehicle, and by repeatedly assaulting the Complainant on September 23, 2017.

Submissions have been requested with respect to appropriate disciplinary sanctions or corrective measures.

## REASONS FOR DECISION:

### I Overview and History of Proceedings :

- (1) The history of proceedings relating to this Review is complex and warrants a detailed summary of developments as they took place.
- (2) Proceedings under the *Police Act* were commenced as a result of a registered complaint filed by the Complainant with VPD Professional Standards dated September 29, 2017 ( the "Complaint"). The Complaint description was noted to be as follows:  
  
*"[The Complainant] contacted VPD PSS to report a negative physical interaction with [the Member] Sept 23, 2017 in Seaside Oregon. [The Complainant] has reported the incident to the Seaside Police Department. She is currently working on a statement and will forward the document to [VPD/Prof Standards] by Tuesday Oct 3, 2017."*
- (3) In her subsequent written statement, the Complaint outlined a course of alleged off duty misconduct by the Member while on a brief vacation with the Complainant in Oregon between September 22 and 24, 2017.
- (4) There is no dispute that at all material times the Member and the Complainant had been in a relatively brief romantic relationship.
- (5) The Complaint was reviewed by the Office of the Police Complaint Commissioner ( the "OPCC") and accepted as admissible October 25, 2017.
- (6) In reviewing the Complaint, the Commissioner determined that the alleged misconduct by the Member in repeatedly striking and restraining the Complainant, if proven, could support a finding of Discreditable Conduct pursuant to section 77(3) (h) of the Police Act.
- (7) However, noting the apparent police investigation by the Seaside Police Department, the investigation of the admissible Complaint was ordered suspended pursuant to section 179(4) of the Police Act.
- (8) On October 10, 2018 VPD Professional Standards Section requested a cancellation of the suspension order made by the Commissioner. The VPD advised that the investigator assigned to the Complaint, (the "Investigator"), had learned that the Seaside Police Department investigation of the Member and the Complaint would not be proceeding.
- (9) On October 12, 2018 the OPCC issued an order lifting the suspension of the investigation of the Complaint.

- (10) On October 22, 2018 the Member received notice that the Complaint would be investigated by VPD Professional Standards.
- (11) A pre-hearing conference was offered to the Member and accepted. The assigned discipline authority approved disciplinary and/or corrective measures agreed to by the Member at the pre-hearing conference.
- (12) In reviewing the agreement reached at the pre hearing conference, the Commissioner rejected the terms of the settlement. In doing so the Commissioner ordered that the matter proceed to a Discipline Hearing.
- (13) The Final Investigation Report was completed April 23, 2019 ( the "FIR" ) and details the facts relevant to the Complaint and the position of the various witnesses and parties, including the Complainant.
- (14) Following a discipline proceeding, on February 6, 2020 the Discipline Authority made the following key findings of fact concerning the Member:
- a. That on September 23, 2017, the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* regarding the circumstances by which damage was caused to the front windshield of the Member's vehicle.
  - b. That further allegations of *Discreditable Conduct* on the same date concerning were not substantiated detailed as follows:
    - (i) The Member's intoxication to the point of being belligerent or obnoxious in public;
    - (ii) The Member's involvement in verbal arguments, in public and private, with the Complainant that alarmed the public; and
    - (iii) The Member's use of physical force on the Complainant.
- (15) As a result of the foregoing decisions, disciplinary measures were ordered against the Member as follows:
- (i) A suspension without pay for 6 working days; and
  - (ii) An order for the Member to attend emotional regulation sessions with a psychologist for a minimum of 12 sessions, and then at the discretion of the treating psychologist.
- ( together with the findings in para (14), called the "Discipline Decision" )

(16) On April 7, 2020, subsequent to the publication of the Discipline Decision, the Complainant wrote to the Commissioner outlining her concerns with the decision. The Complainant requested a Public Hearing to properly reflect the seriousness of domestic violence and to recognize the Complainant's evidence on the matters in issue.

(17) In reviewing the record of the Disciplinary Decision and request received from the Complainant pursuant to s. 138 of the Police Act, the Commissioner concluded that:

- (a) There was a reasonable basis to believe that the decisions of the Disciplinary Authority's findings were, in part, incorrect; and
- (b) Specifically, the Commissioner noted that the Discipline Authority had substantiated one aspect of the Member's misconduct with respect to the damage to the Member's vehicle. However, the Commissioner also noted that the Discipline Authority had found a lack of "clear and cogent" evidence to support the allegations of misconduct relating to the Member's alleged state of intoxication and physical assaults on the Complainant.

(18) As a result of the Commissioner's views with respect to the Discipline Authority's Discipline Decision, he determined pursuant to ss. 138(1) and 141 of the *Police Act*, that:

- (a) A Review on the Record of the Discipline Decision was necessary in the public interest; and
- (b) That the disciplinary default alleged involving the Member pursuant to section 77 of the Police Act to be considered in that Review was as follows:

*"That on September 23, 2017, Constable Logan committed Discreditable Conduct pursuant to section 77(3)(h) of the Police Act when he:*

- (i) Was belligerent and/or obnoxious in public due to intoxication;*
- (ii) Damaged his car windshield;*
- (iii) Had verbal arguments with the Complainant that raised public alarm; and*
- (iv) Used physical force on the Complainant.*

(The "Misconduct Allegations")

(19) The definition of "*discreditable conduct*" relevant to the Misconduct Allegations set out in the *Police Act* section 77(3) (h) is as follows:

*"discreditable conduct", 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, including, without limitation, doing any of the following:*

- (i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;*
- (ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act*

*(iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada;*

- (20) On June 1, 2020, I was appointed by the Commissioner to conduct this review of the Discipline Decision. Disclosure materials relating to that earlier decision were subsequently provided to the parties by the Office of the Police Complaint Commissioner ( the “OPCC”).
- (21) At an administrative conference call convened June 18, 2020, Counsel to the Commissioner and Counsel for the Member confirmed receipt of the disclosure materials and were invited to provide written submissions on this review of the Discipline Decision. By consensus, Counsel also agreed to attend October 6, 2020 for oral submissions.
- (22) July 6, 2020 Counsel acting on my behalf wrote to the Discipline Authority and the Complainant advising of their right to make submissions in connection with this review.
- (23) The Discipline Authority declined the opportunity to make further submissions and relies on the Forms 3 and 4 filed in connection with this matter.
- (24) The Complainant requested, and was granted, the right to make submissions in connection with this Review.
- (25) It appears from consideration of the Discipline Decision that no submissions from the Complainant were considered in the context of that process. The record does not disclose whether or not the Complainant was advised of her right to make a submission in relation to such proceedings.
- (26) The Complainant also made application to adduce further evidence relating to certain therapist records.
- (27) In a decision dated August 18, 2020, that application to adduce further evidence was denied as it did not meet the statutory requirements for admission of such additional material under section 141(4) of the *Police Act*.
- (28) No notice of applications to consider additional evidence was given by any other party.
- (29) Counsel to the Commissioner and Counsel for the Member have both provided oral and written submissions in connection with this Review.
- (30) The Complainant has also provided oral and written submissions.

## II Standard of Review and Documents Reviewed

(31) S. 141 (9) of the *Police Act* confirms that the standard to be applied in my review of the Disciplinary Decision is correctness. That standard was defined by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 50 as follows:

50. *As important as it is that courts have a proper understanding of reasonableness review as a deferential standard, it is also without question that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law. This promotes just decisions and avoids inconsistent and unauthorized application of law. 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.*

(32) The documents reviewed, as disclosed by the OPCC, include a flash drive and hard copies of the Final Investigation Report ( the "FIR"), attachments to that report, submissions of parties in relation to the Discipline Proceeding, as well as Forms 3 and 4 ( the "Record").

## III Submissions of Counsel to the Commissioner

(33) The written submissions of Counsel to the Commissioner were entered as an exhibit in this Review and can be summarized as follows:

- (a) The Discipline Decision focused primarily on the factual conflicts between the accounts of the Complainant and the Member on the issue of alleged assaults on the Complainant by the Member;
- (b) The Discipline Authority resolved the conflicts in the evidence by largely accepting the evidence of the Member in preference to that of the Complainant;
- (c) It is the position of Counsel to the Commissioner that the Discipline Authority erred in preferring the Member's evidence by implicitly undermining the credibility of the Complainant relying on inappropriate "myths and stereotypes". Specifically, it is submitted that:

*"the danger in relying on reasoning based on myths and stereotypes is that they are generally unsupported by any evidence and might not be true at all or, even if true for some person or people, they might not be true in respect of a particular complainant."*

- (d) Counsel further submits that inappropriate “myths or stereotypes” may arise in connection with conclusions drawn as result of “the absence of immediate reporting” of an incident and departures from “expected conduct” as defined by the decision maker;
- (e) As well, it is submitted that the Discipline Authority’s questions directed to the Investigator were improper in that they invited the Investigator to speculate on stereotypical generalizations that were suggested to be relevant to the actions of the Complainant;
- (f) Counsel submits that the Discipline Authority incorrectly rejected the Complainant’s account of the alleged assaults on her by the Member relying improperly on “myths and stereotypes” that undermined the Complainant’s credibility;
- (g) Counsel further submits that in rejecting the corroborative value of text messages sent by the Complainant to friends concerning the incidents with the Member as circumstantial evidence, the Discipline Authority erred by characterizing the same as “not objective third party evidence”;
- (h) Similarly, Counsel takes the position that by failing to photograph herself or leave the Member’s presence, the Complainant did not impair her credibility;
- (i) Counsel submits that the Discipline authority also fell into error by assuming that a woman facing the shock of domestic violence would act in a predictable manner, thereby negating her credibility and the value of her evidence. On this point Counsel relies on *R. v Lacombe*, 2019 OCCA 938, specifically, paragraph [23] iv:

*“iv. These cases should never be decided on how abuse victims are expected to react by people who have never suffered abuse – R. V Shearing 2002 SCC 58.”*

- (j) Counsel further submits that the analysis of the Discipline Authority that concludes that the evidence results in a “he said, she said” conclusion was incorrect, as it failed to properly consider the relative credibility of the various witnesses in the context of the limited documentary evidence;
- (k) In terms of the Complainant’s reaction to events involving the Member in Seaside, Counsel notes that the first reference to being “fearful for her life” arose only after the three alleged strikes took place, a return to the Seaside hotel, the Member’s injury and fall, the reading of texts involving [REDACTED] and subsequent argument with the Member;
- (l) In considering the Complainant’s actions, Counsel submits that the totality of the Complainant’s response is highly relevant and credible; and
- (m) Counsel submits that the Discipline Authority fell into error when he concluded that the absence of a charging decision by Oregon Police had any relevance to the Complainant’s credibility and her version of events.

- (34) Counsel to the Commissioner takes the position that the Member's theory that the Complainant's allegations only arose as result of her anger arising from finding evidence of his unfaithful acts while on the trip to Oregon is incorrect.
- (35) Counsel submits that it would not have been a surprise that the Complainant was angry learning of the Member's infidelity, however, maintains that there is no basis to conclude that the Complainant constructed "an elaborate lie with aspects of truth interwoven within it".
- (36) Counsel maintains that any hit to the face in the circumstances described by the Complainant would be "shocking and distressing and might reasonably create the subjective impression of a hard hit".
- (37) Counsel further submits that " even if the Complainant overstated the extent of the Member's impairment, even if she was angry at learning that [the Member] had not been faithful to her, there is no evidence and no basis to conclude that she repeatedly lied about being assaulted".
- (38) Finally, it is submitted by Counsel to the Commissioner that:
- (a) The Discipline Authority incorrectly relied on myths, stereotypes and other irrelevant factors in rejecting the credibility of the Complainant's evidence;
  - (b) The actions of the Member were characterized by intoxication, frustration, extreme anger and an apparent inability to control that anger resulting in the assaults on the Complainant; and
  - (c) When properly considered, the totality of the evidence presents a clear, cogent and convincing basis upon which to find that the allegations of assault, and discreditable conduct on that basis, have been substantiated.

#### **IV Submissions of Counsel for the Member**

- (39) Counsel for the Member provided detailed written and oral submissions to the Discipline Authority in the Discipline hearing, the contents of which are set out in the attachments to the FIR.
- (40) Counsel also provided a detailed written Reply submission to the arguments advanced by Counsel to the Commissioner, which has also been marked as an exhibit in this review.
- (41) Finally, Counsel provided oral submissions amplifying, and detailing, the positions taken in both the initial submissions and Reply submissions. All of those submissions have been considered in this Review.



- (42) First, Counsel submits that any admissions made by the Member at the Pre-Hearing Conference were made in a “without prejudice” forum and are not binding on the Member.
- (43) Second, Counsel submits that the onus of proof, is proof on a balance of probabilities, engaging evidence that is “clear, convincing and cogent”.
- (44) Counsel notes that where there are two versions of events, a trier of fact must have articulable reasons for preferring one version over the other. It is submitted that absent such articulable reasons, the decision maker must prefer the version of the person most in jeopardy, in this case, the Member.
- (45) In considering the relative credibility of witnesses, Counsel, as with Counsel to the Commissioner, notes the applicability of the British Columbia Court of Appeal decision, *Faryna v Chorny*, [1952] 2 DLR 354. The full text of the applicable legal principles are as follows:

*[10] ...On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and cf. Raymond v. Bosanquet at p. 566, 59 S.C.R. 452 at p. 460, 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.*

*[11] The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth.”*

- (46) Counsel’s submissions outline what are described as “grave concerns” with an objective analysis of the Complainant’s evidence affecting her credibility. Specifically, Counsel argues that:

- (a) The Complainant's detailed description of events was characterized as "lurid" in that it tended to exaggerate and overly dramatize the alleged misconduct of the Member;
  - (b) The Complainant's evidence did not accord with that of the Member and Cst. [REDACTED] on several points, including the amount of alcohol consumed by the Member, the Member's overall state of intoxication and his demeanor while at the pubs;
  - (c) There is no objective evidence supporting the Complainant's version of events or contradicting that articulated by the Member;
  - (d) The Complainant failed to detail the second alleged assault at the Quarry in her initial complaint to VPD and Seaside Police, nor did she do so to her friend, Ms. [REDACTED];
  - (e) The Complainant's submission that the Member's actions caused her to "fear for her life" were inconsistent with her actions engaging with another love interest of the Member, but consistent with the actions of an angry, vindictive woman attempting to provoke a crisis;
  - (f) The Complainant exaggerated the extent of the Member's head wound and was less than genuine in her efforts to assist with that injury; and
  - (g) The Complainant was deceptive in her reason for accessing the Member's phone and text records.
- (47) In summarizing the positions taken by Counsel for the Member, four key arguments are advanced in disputing the position advanced by Counsel to the Commissioner on this Review:
- (a) First, Counsel for the Member submits that Counsel to the Commissioner was incorrect in determining that the Discipline Authority failed to consider "corroborating evidence" which might substantiate the evidence of the Complainant;
  - (b) Second, Counsel for the Member submits that Counsel to the Commissioner was incorrect in concluding that "appropriate weight" was not given to the text messages sent by the Complainant;
  - (c) Third, Counsel for the Member submits that the position taken by Counsel to the Commissioner that the Discipline Authority, "appeared to be lacking in understanding and consideration of the impact of trauma and the dynamics of intimate partner violence" in his consideration of the Complainant's evidence was incorrect; and
  - (d) Fourth, Counsel for the Member submits that Counsel to the Commissioner was incorrect in concluding that the Discipline Authority placed too much weight on the lack of charges approved by Seaside police.
- (48) On the first issue, the specific submissions of Counsel for the Member confirm that as a matter of law, and as acknowledged by Counsel to the Commissioner, "corroboration" of the Complainant's evidence is not required.

- (49) Counsel also noted that the Discipline Authority had considered the totality of the evidence and cited appropriate authority, *Faryna v. Chrony* [1952] 2 DLR 354 (BCCA), for the proposition that “*the real test of the truth ... must be its harmony with the preponderance of probabilities.*”
- (50) On the second issue, Counsel for the Member submits that the substance of the arguments of Member relates to inconsistencies in the evidence of the Complainant, including the text messages included in the FIR.
- (51) Specifically, Counsel for the Member notes that the Discipline Authority articulated the following concerns as to inconsistencies arising with respect to the Complainant’s evidence:
- (a) That the Complainant was inconsistent in her claims of assaults committed by the Member. Specifically, in most of her statements, the Complainant described three key assaults. In her statement to the Seaside Police Department, however, the Discipline Authority determined that the Complainant failed to mention the most serious of the assaults allegedly committed by the Member at roadside south of the Fischer Quarry;
  - (b) That upon returning home, the Complainant described her trip with the Member to her friend Ms. [REDACTED]. Again, when Ms. [REDACTED] described the Complainant’s allegations to the Investigator, the alleged serious assault at the Quarry did not form part of that report;
  - (c) That the Complainant consistently used detailed, inflammatory language to describe the Member’s conduct. As an example, her descriptions of the Member’s conduct while consuming alcohol were not entirely supported by the collective evidence;
  - (d) That parts of the Complainant’s rationale for accessing the Member’s phone were demonstrably false, thereby affecting the Complainant’s credibility. Specifically, when the Complainant went to retrieve insurance documents, she stated that a text from another apparent love interest of the Member, Ms. [REDACTED] “had just come in” did not appear accurate. In fact, it appears that the Complainant was scrolling through the Member’s text messages and discovered this message sent approximately ninety minutes prior; and
  - (e) That the Member’s alternate love interest, Ms. [REDACTED] described her strong physical and verbal actions towards the Member upon learning of his infidelity. However, Ms. [REDACTED] reported that in response, the Member “did not lay one finger” on her. Hence, the submission is that the serious allegations of violence advanced by the Complainant are not consistent with the observations of an informed third party in terms of the Member’s demeanor and conduct.
- (52) It is submitted that the Discipline Authority properly considered the content and timing of text messages sent and received by the Complainant.

- (53) Specifically, Counsel for the Member submits that the fact that the Complainant did not contact Ms. [REDACTED] and did not make an allegation of assault until after she had scrolled through the Member's phone discovering that he was dating another woman, and after she had spent considerable time trying to stir up trouble for the Member with Ms. [REDACTED] supports the inference that the texts to her friends may have been more of the same: an attempt to stir up trouble for the Member, rather than a genuine statement of fear and concern.
- (54) It is submitted that the efforts of the Complainant were intended to stir up trouble between Ms. [REDACTED] and the Member is strong evidence both that she was in a retributive state of mind, and was unafraid of the consequences her texts and telephone call to the other woman might provoke.
- (55) As such, it is the submission of Counsel for the Member that the Discipline Authority correctly considered multiple apparent inconsistencies in the evidence of the Complainant, properly raising credibility concerns with respect to her evidence.
- (56) On the third issue, the "improper use of myths and stereotypes", Counsel for Member submits that no such improper inferences were taken by the Discipline Authority. Indeed, it is submitted that the Discipline Decision evidences a decision taken on what the Complainant did, not what she did not do. Specifically, it is submitted that the Complainant while claiming to be in deadly fear of the Member as a result of earlier assaults, in fact scrolled through his phone, ultimately contacting an unknown love interest of the Member and thereafter, attempting to precipitate a crisis.
- (57) On the fourth issue, Counsel for the Member submits that the Discipline Authority properly noted the fact that charges were not pursued by the Seaside Police Department. However, Counsel submits that there was no undue reliance on the absence of charges in coming to the decisions reached by the Discipline Authority.
- (58) Counsel also notes, however, that the reports of the Complainant referenced by the Seaside Police Department did not detail the alleged assault roadside at the Quarry. It is submitted that as this matter is by far the most violent of the three assaults reported by the Complainant, the apparent omission of the report of that incident to the Seaside Police or Ms. [REDACTED] raises a credibility concern as to the Complainant's evidence.
- (59) Counsel for the Member further submits that there is a fundamental difference between drawing improper inferences based on non-reporting or late reporting, and drawing inferences by comparing early reports of alleged abuse with later reports of the same incident and the apparent inconsistencies arising from those reports.
- (60) On a final point, Counsel for the Member notes the submission of Counsel to the Commissioner that the Discipline Authority had not given due weight to the submissions of the Complainant. Counsel for the Member submits that such is not the case.

- (61) It is acknowledged by Counsel for the Member that it remains unclear whether or not the Complainant's submissions actually reached the Discipline Authority. Counsel maintains that the materials delivered by the Complainant are not what the Police Act contemplates as submissions. Counsel submits that submissions would be an argument about why the facts in the FIR support (or do not support) the conclusions of the Discipline Authority, or why the Discipline Authority at the discipline proceeding should find the allegations substantiated. Counsel maintains that the Complainant's submissions are more in the nature of a victim impact statement not tested by questioning by the investigator or otherwise.
- (62) Counsel for the Member submits that the assertions of the Complainant about the impact of the alleged assaults has not been tested in any way, including through questioning by the Investigator.
- (63) It is submitted that the Adjudicator can give such claims no weight in assessing the prior question: was there an assault at all.
- (64) Counsel for the Member concludes by submitting that there is no evidence that any form of misconduct has been proven involving the Member, including the findings of misconduct substantiated by the Discipline Authority, with respect to the damage to the windshield of the Member's vehicle.

## **V Submissions of the Complainant**

- (65) The Complainant was advised of her right to request approval to make submissions in these proceedings pursuant to section 141(7) of the *Police Act*. Approval to do so was included in the Applications Decision released August 18<sup>th</sup>, 2020.
- (66) In the context of approving the Complainant's application to make submissions, it became evident that the Complainant had made earlier submissions to the Discipline Authority June 12, 2019. The Record discloses that those submissions were considered as part of the pre-hearing conference process.
- (67) However, in the transcript of the discipline proceedings dated November 12, 2019, at page 27, line 12, the Discipline Authority seeks, and receives, confirmation that no submissions have been received from the Complainant.

- (68) It appears, therefore, that for reasons unknown, those Complainant submissions were not directly considered or entered as exhibits in the initial discipline proceedings convened by the Discipline Authority. It is also clear that the Discipline Authority sought out any submissions that had been advanced, but was advised that such material had not been received.
- (69) The Complainant was asked to forward the June 12, 2019 submissions to all parties as part of this review process. As Adjudicator, I confirmed that the earlier June 12, 2019 submissions would be considered in this process, in addition to any further submissions tendered as contemplated by the August 18, 2020 decision.
- (70) In approving the Complainant's right to make submissions in the decision made August 18, 2020, several conditions were imposed, including the following at para 23 (b):
- "The submissions of the Complainant must not introduce new evidence, but rather highlight the position of the Complainant on the substance of this Review: the alleged misconduct of the Member and disciplinary sanctions associated with the same;*
- (71) Counsel to the Adjudicator reconfirmed this limitation in a memorandum to the parties on September 22, 2020.
- (72) On September 24, 2020 the Complainant delivered to the parties her written submissions with respect to this review. Those submissions were marked as the fifth exhibit at the oral hearing of submissions on this review.
- (73) The Complainant's submissions include several references to alleged facts that are not contained in the FIR, including alleged detail of other proceedings that may involve the Member.
- (74) Clearly, such matters are inconsistent with my order of August 18, 2020. As well, such material has not been the subject of review by the Investigator, nor have either Counsel for the Commissioner or Counsel for the Member had the opportunity to challenge, or make submissions, with respect to such evidence.
- (75) In considering the ambit and scope of the Complainant's submissions, I have, of course, taken into consideration the fact that it is the submission of a lay person. As well, the Complainant did seek direction on the form of her submissions, however, beyond the orders and instructions referenced above, it was my position that as Adjudicator I had no authority to assist the Complainant with her written materials. To have done so would, in my view, raises a concern as to my independence in considering this matter. Nonetheless, the result is that the submissions made are problematic given their scope and content.

- (76) At the hearing of oral submissions, the overly broad scope of the Complainant's most recent submissions was canvassed with her, and the Complainant advised of the issues associated with consideration of such supplemental evidence not contained in the FIR.
- (77) I have resolved the issues arising from the scope and content of the Complainant's most recent submission by not taking into consideration facts, or factual assertions, made in the materials that are not contained in the FIR. My summary of the Complainant's comprehensive submissions and my analysis of the same will, therefore, be based on consideration of the details set out in the FIR and no other facts.
- (78) In considering the Complainant's initial submissions made to the relevant authority at the Pre-Hearing Conference and the most recent submissions, it is clear that there is substantial overlap in the positions advanced. The latest submissions, however, specifically address most of the positions raised by Counsel for the Member, largely on the issue of the Complainant's credibility. I have considered both sets of submissions within the parameters noted above. I will now summarize those submissions.
- (79) As noted, the Complainant's most recent submissions track much of the material contained in the materials advanced by Counsel for the Member.
- (80) First, the Complainant denies that there are material inconsistencies in her evidence, particularly with respect to her initial disclosures to VPD Professional Standards, Seaside Police investigators and to her friend Ms. [REDACTED]. Specifically, the Complainant notes:
- (a) The original oral statements given by the Complainant to both VPD and Seaside Police Department were at some point converted to a written format. However, the Complainant was not provided with copies of those documents. The Complainant notes that the original report from VPD Professional Standards summarized the complaint as a "negative physical interaction" with the Member in Seaside. The Complainant denies that her initial reports of misconduct were incomplete or inconsistent. She submits that the generalization of her original complaint by both VPD and Seaside police does not detract from the consistency of her evidence;
  - (b) With respect to Ms. [REDACTED] the Complainant notes that the interview by the Investigator was brief, approximately 13 minutes in duration, and conducted almost 18 months after the alleged incident with the Member;
  - (c) The Complainant submits that in all of the circumstances, it is not unreasonable to expect that Ms. [REDACTED] would not recall all details of her dealings with the Complainant, particularly in light of the fact that the two did not appear to have discussed the specifics again after the initial encounter. As well, the Complainant notes that her friend was more engaged in consoling her than focusing on details of the alleged assaults;

- (d) The Complainant denies as well that in her interview with the Investigator that the assault alleged to have taken place at the Quarry was not mentioned. The Complainant notes that the summary of that interview clearly discusses what took place at the Quarry; and
  - (e) In the result, the Complainant submits that the alleged initial disclosure inconsistencies noted in submissions of Counsel for the Member have no substance in considering her credibility.
- (81) The Complainant next submits that submissions by Counsel for the Member that her description of the Member's demeanor and conduct on the evening in question were neither inflammatory nor inaccurate. The Complainant submits that the detail provided in her accounts of the evolution of events enhances her credibility.
- (82) The Complainant also denies that her reporting of events is not "entirely supported by the collective evidence", as argued by Counsel for the Member.
- (83) In terms of the Member's pattern of drinking and actions while out with Cst. [REDACTED] the Complainant notes that the interview of that member took place long after the incident and that details of Cst. [REDACTED] recollections were vague at best.
- (84) It is also submitted that no contact was ever made by the Investigator with the person actually serving the parties at the last pub in Seaside. The telephone contact by the Investigator with a manager of that pub many months after the night in question added no real direct evidence as to the conduct of the Member. The reported absence of any "recollection of notations of" incidents on the 23<sup>rd</sup> of September 2017 was, in the submission of the Complainant, vague and irrelevant to any consideration of what actually happened.
- (85) The Complainant also notes that Cst. [REDACTED] appears to have had a friendship with the pub management and that as such, any reporting of issues arising from the Member's conduct may well have been mitigated by that relationship.
- (86) In short on this point, the Complainant takes the position that the only persons with direct knowledge of what took place in the pubs were the Member, Cst. [REDACTED] and the Complainant, with the Complainant having the most detailed recollection of events as evidenced by her statements unaffected by alcohol consumption.
- (87) The Complainant's submissions next take issue with the position taken by Counsel for the Member that her expressed reasons for access to the Member's phone were demonstrably false. The Complainant maintains that she only accessed the phone to contact the Member's insurance company after the Member injured himself by falling in the motel room. Her submission is that the reason for accessing the Member's phone was simply to use his cell plan, rather than hers, to make an anticipated long distance call to an insurance agency to confirm coverage for the Member.



- (88) The Complainant submits that the phone was voluntarily given to her by the Member, along with the relevant access code. The Complainant denies the assertions made by Counsel for the Member that her dealings with texts and calls involving Ms. [REDACTED] were intended to incite matters with the Member and also denies that her reporting of the alleged assaults involving the Member were in retribution for learning of the Member's relationship with Ms. [REDACTED]
- (89) The Complainant acknowledges that in retrospect she would have conducted herself differently in her dealings with Ms. [REDACTED]. However, it is the Complainant's submissions that her actions after being assaulted by the Member were affected by the shock and confusion she was feeling that evening.
- (90) The Complainant submits that Ms. [REDACTED] report of an intense physical interaction with the Member on his return from Seaside has no relevance to the facts relating to the incidents in Seaside. Specifically, the Complainant submits that the fact that Ms. [REDACTED] admitted physical actions directed towards the Member, and reported no physical response from the Member, is irrelevant.
- (91) In terms of myths and stereotypes, the Complainant emphasizes the significance of shock in understanding her responses to the Member's alleged assaults. It is submitted that the Discipline Authority paid limited attention to the effects of domestic violence and failed to appreciate how significant shock can be in defining how a person functions and processes information in reacting to violence.
- (92) The Complainant reiterates that the shock she felt was compounded by uncertainty on how to respond to the Member given that she was in the process of applying to join the RCMP. The Complainant confirms that she was concerned that a police report of a violent incident could impact her application to become a police officer.
- (93) The Complainant also notes that the shock she felt was also impacted by knowing that she was in a small American town with the Member late at night with limited resources. The Complainant denies that she acted simply as a woman scorned and maintains that she was genuinely terrified.
- (94) The Complainant also notes in her submissions that as a result of the shock she felt, she made decisions and took actions that "were not ideal choices", and takes responsibility for those actions. In the Complainant's submissions, everything that happened after the assaults were actions that simply assisted her in getting past a frightening and unsettling situation.
- (95) The Complainant denies expressing fear for her life until after the Member had fallen and she had experienced the volatile, and unpredictable, reactions of the Member including the repeated bear hugs and pleading to end the crisis that had arisen.

(96) In considering the Member's credibility, the Complainant argues as follows:

- (a) That the Member had been deceitful in carrying on two relationships over several months resulting in multiple lies;
- (b) That the Member's assertion that he accidentally broke the windshield in his new car was not accurate and in fact resulted from repeated, deliberate action by the Member as he vented his extreme anger;
- (c) That the Member deliberately delayed providing statements in connection with the Seaside incidents despite promising, through Counsel, that such would be forthcoming. In the result it is submitted the interview of other witnesses and completion of the investigation were significantly delayed; and
- (d) That the Member is a "pathological liar with no regard for honesty".

(97) The Complainant concludes her submissions by arguing that since the outset, she has been consistent, persistent and detailed in her complaints concerning the Member.

(98) The Complainant also noted that her initial submissions were focused on achieving orders that might assist in rehabilitating the Member. However, the Complainant in her most recent submissions now maintains that termination is necessary in order to ensure that another woman does not suffer significant injury in dealings with the Member.

## **VI Credibility and Reliability of the Witnesses**

(99) At the core of this review is the need for a careful analysis of the manifest conflict in the evidence between the Member and the Complainant on the key allegations of misconduct relating to the assaults on the Complainant and damage to the Member's windshield.

(100) As noted above, with the exception of the misconduct allegation relating to the damaged windshield on the Member's new vehicle, the Discipline Authority did not accept the version of events articulated by the Complainant.

(101) The Discipline Authority noted that with respect to the issues of the Member's state of intoxication and alleged assaults of the Complainant, there was not, in his view "clear and cogent evidence" supporting the allegations.

(102) I will therefore begin my analysis of this matter by considering the evidence of each witness and considering the credibility of those parties and the reliability of their evidence.

(103) Of course, in doing so, I will be guided by the test in *Faryna v Chorny* [1952] 2 DLR 354 (BCCA) para 11. This analysis is critical in determining whether or not the Disciplinary Decision was correct.

VII

- (104) Ms. [REDACTED] is a long term friend of the Complainant. On the evening of September 23, 2017 Ms. [REDACTED] received a number of text communications with the Complainant. The following day Ms. [REDACTED] met the Complainant at her home after she returned to Canada and was instrumental in providing consolation and support.
- (105) Ms. [REDACTED] was, of course, not present during the interactions between the Complainant and the Member, however, she had retained copies of the relevant written communications and talked to the Complainant on her return.
- (106) Ms. [REDACTED] frankly acknowledged some difficulty recalling details beyond the written documents as the interview with the Investigator took place over a year after the matters in issue. She was, however, honest and forthright in acknowledging her limited recollection of events, and did not discuss the incident with the Complainant after the initial contact on her return.
- (107) The reliability of Ms. [REDACTED] evidence is obviously affected by the passage of time. As well, in her statement to the Investigator, Ms. [REDACTED] confirmed that's she could not recall the specific details of the alleged assaults on the Complainant by the Member.
- (108) Ms. [REDACTED] ability to recollect and report on matters in issue is therefore diminished, and hence, the reliability of her evidence. However, in all other respect I am satisfied that Ms. [REDACTED] was an honest and credible witness.

VIII

- (109) Ms. [REDACTED] was interviewed April 3, 2019 concerning the September 2017 incident involving the Member. Ms. [REDACTED] had been living with the Member when the September incidents took place, but ended the relationship shortly after the Member's Oregon trip.
- (110) Ms. [REDACTED] evidence was limited to her interaction by phone and text with the Complainant, and her in person dealings with the Member on his return from Oregon. Some of Ms. [REDACTED] evidence was supported by copies of text messages involving the Complainant.

- (111) Ms. ██████ described her ability to recall the key events as “pretty good” because of the events in question affected her relationship with the Member.
- (112) I am satisfied that Ms. ██████ was a reliable witness. There is nothing in the Record suggesting equivocation in any aspect of her evidence.
- (113) I have considered whether or not Ms. ██████ evidence was coloured by her relationship with the Member, however, I am satisfied that there nothing in the interviews to support such a conclusion.
- (114) Ms. ██████ was able to observe, recall on report on issues involving the Member and the Complainant. There is nothing to support the view that she has done so in anything other than an honest and forthright manner.
- (115) I am therefore satisfied that Ms. ██████ was a credible and reliable witness.

## IX Constable ██████

- (116) Cst. ██████ a VPD member, has known the Member for several years. More recently early in 2017, the Member and Cst. ██████ had worked together for approximately three months. Cst. ██████ advised the Investigator that before the encounter in Seaside, he had not previously socialized with the Member, nor had he met the Complainant.
- (117) Cst. ██████ provided a report of his involvement with the Member and the Complainant at two pubs in the Seaside area on September 23, 2017. This evidence broadly tracks the evidence of the other parties on movements and activities of the parties while together.
- (118) Cst. ██████ evidence does, however, raise a number of credibility and reliability concerns:
- (a) Cst. ██████ was consuming alcohol with the Member on the afternoon of September 23, 2017. However, he was not clear on the exact amounts of alcohol consumed by the parties;
  - (b) Cst. ██████ acknowledged that he and the Member had been drinking from approximately 1 pm to approximately 5 pm in the company of the Complainant at two different establishments. The estimate was that he and the Member had consumed “probably half a dozen beer ” each, as well as a “couple of shots” that may also have been consumed. The size of those drinks and alcohol content of the same was not specified;
  - (c) Cst. ██████ did acknowledge, however, that both he and the Member were intoxicated at “about 6” on a scale where “0” was completely sober and “10” was passed out. He also acknowledged that neither he nor the Member were capable of driving;

(d) As a result, the reliability and accuracy of the Member's recollection was likely affected by his state of impairment; and

(e) The interview with Cst. [REDACTED] was recorded on February 6, 2019, more than 16 months after the Seaside incident. His evidence is noteworthy in the matters he does not recall, either as result of the passage of time, or the effect of alcohol impairment on the date in question. Matters on which Cst. [REDACTED] was uncertain or could not recall include:

- (i) Whether or not the party was ever "cut off" by staff at a pub in Cannon Beach;
- (ii) Whether or not anyone stumbled or fell either inside the pub or outside;
- (iii) Whether or not he made any comments about the relationship between the Member and the Complainant ; and
- (iv) The drinking pattern, if any, of the Complainant.

(119) As a result of the foregoing issues, I find that Cst. [REDACTED] reliability as a witness was very much in doubt. Cst. [REDACTED] had a limited ability to observe and accurately note developments between the relevant parties on September 23, 2017.

(120) As well, Cst. [REDACTED] had a limited ability to accurately recall and report details of the interactions between the parties beyond broad issues that took place at the pub. In no sense was Cst. [REDACTED] an accurate and comprehensive reporter on issues in dispute.

(121) I find, therefore, that Cst. [REDACTED] was not a credible or reliable witness.

## **X            The Member**

(122) There are a number of significant issues affecting the Member's credibility. The issues arise with respect to the Member's ability to accurately, consistently and completely observe, recall and report on events as they developed involving the Complainant.

(123) There are also many issues that touch on the unreliability of the Member's evidence, also impacting his overall credibility. Few of these issues were specifically addressed in the Discipline Authority's decision. Let me explain.

(124) The first issue concerns the reliability of the Member's evidence. Despite several requests from various parties, including the Police Department in Seaside, Oregon, the Member had not provided a statement to anyone concerning the matters in issue until November 6, 2018. This was more than 14 months after the last interactions with the Complainant in Seaside, Oregon.

- (125) In the statement, the Member acknowledges that “his memory has faded” over time. The statement also records at several points that the Member “could not recall” specific facts associated with the matters in issue. For example, the Member was able to recount his recollection of events in Oregon up to the argument with the Complainant. He maintains, however, that he could not recall what the “heated argument” was about, nor could he recall what the ensuing argument was about when the couple reached the Seaside hotel room.
- (126) The Member did apparently recall the intervening events admitting he struck and broke his car windshield “out of frustration” with a backhand hit rather than a punch. The Member also denied any form of assault on the Complainant at any point, even an inadvertent strike while he was hitting the windshield.
- (127) As such it appears that the Member’s recollection of events was selective, and incomplete, on some of the most crucial issues in dispute.
- (128) Other factors affecting reliability are the apparent contradictions in the Member’s evidence on his recollection of events. As noted, the Member began his statements noting that his memory of events had “faded”. At several points, the Member specifically notes that he could not recall details such as the amount of the bill from the pub and the nature of his arguments with the Complainant. However, in the interview with the Investigating Officer, the Member maintained that considering his level of intoxication, his statement (recollection) of the incident was “pretty accurate”. The Member also maintained that he “had a clear recollection of the circumstances during the drive back to the hotel”. The contradiction in those positions raises concerns as to the reliability of the Member’s recounting of events.
- (129) A second important issue relates to the Member’s state of intoxication throughout the alleged incidents with the Complainant. It appears that the actual amount of alcohol consumed by the Member is in issue. What is admitted is that the Member had consumed 6 beer and at least one “shot” before the Member and the Complainant left in the Member’s car. The Member acknowledges intoxication at “5 out of 10”. sufficient to conclude that *“I was intoxicated so I could not operate my motor vehicle”*.
- (130) The Member also stumbled on initially sitting down at the table in the Cannon Beach Pub, having just left another pub. On later leaving the second pub, the Member stumbled again, this time falling to the ground. Although the explanation proffered for the stumble, a slightly raised table, did not appear to have affected the movements of any of the other parties. This apparent lack of coordination on the part of the Member raises further concerns as to his actual state of intoxication.
- (131) I am satisfied that the Member’s state of intoxication significantly impacted his ability to accurately observe, recollect and report on his interactions with the Complainant, and hence, the reliability of his evidence.

- (132) A third issue arises with respect to the Member's description of his relationship with the Complainant in the initial statement provided and interview with the Investigating Officer.
- (133) In anticipation of the Complainant's birthday, the Member booked and paid for a getaway weekend in Seaside, Oregon. The Member appears to have taken the position subsequent to booking the trip to Seaside, that he had several concerns about the Complainant, with whom he was then in a casual intimate relationship. These concerns were significant enough that the Member had apparently concluded that he would not support the Complainant in her attempt to apply for forthcoming police officer positions. As well, the FIR confirms that the Member had decided to end his relationship with the Complainant and had also concluded that :
- "I had to separate myself from [the Complainant] and end the casual relationship with her".*
- (134) Notwithstanding those apparent facts, the Member reported in his duty statement that he had decided to proceed with the Seaside weekend getaway with the Complainant as he had paid for the weekend booking in advance and did not want to hurt the Complainant's feelings.
- (135) The Member's position on the nature of his relationship with the Complainant does not have the ring of truth. This is particularly so when one notes that in the interview with the Investigating Officer, the Member confirmed that with respect to the many negative facts reported concerning the Complainant in his statement *"he brought these things up in his duty statement because he believes that it brings context to the possibility of why [the Complainant] was making false allegations against him"*.
- (136) Given the multiple and allegedly significant issues that the Member had identified relating to the Complainant, proceeding with a lengthy driving vacation to another country for a long weekend getaway seems profoundly inconsistent with those concerns. It also appears to directly contradict the Member's expressed intention to "separate" himself from the Complainant and end the casual relationship. Those inconsistencies raise a serious concern as to the Member's honesty and credibility in accurately reporting his interactions with the Complainant.
- (137) A fourth issue relates to the Member's minimization of his actions on several issues.
- (138) The Member, who was acknowledged to be intoxicated, "got into a heated argument" with the Complainant while she was driving his new car back from the second pub in Canon Beach to the local hotel in Seaside. He was apparently angry and frustrated enough as a result of the argument to strike the passenger side windshield of his new car.

- (139) The strike, or strikes, were hard enough and delivered with sufficient force to actually shatter a large portion of the windshield of the Member's new vehicle.
- (140) Clearly such actions are extreme examples of uncontrolled anger and raise serious concerns as to the Member's ability to accurately recall what actually took place while he was so focused on venting his uncontrolled rage physically.
- (141) Of equal significance was the fact that these hits took place not in a parking lot or roadside, but while the Complainant was driving. As a police officer it is impossible to conclude that had the Member been operating with a rational mind oriented as to time and space he would have recognized how profoundly dangerous such action was, both to the occupants of the vehicle and to other using what the Member described as "freeway".
- (142) Such action is substantive proof of the extreme physical and mental detachment from reality evidenced by the Member. That detachment from reality supports the inference that such a state of affairs also extended to the Member's perception and recollection of events with the Complainant and hence, the reliability of the Member's recollection of events.
- (143) It appears that notwithstanding the strikes and broken windshield, the heated argument continued between the Member and the Complainant. It is the Member's position, however, that it would have been "impossible" to have inadvertently hit the Complainant when the windshield was struck. The Member also denies hitting the Complainant in any other manner.
- (144) The Member is, of course, a trained policing professional. He must be taken to know the risks of engaging in a heated, animated argument with the driver of a new vehicle on a freeway, at night on an unknown road in a foreign country. He must also be taken to know how profoundly dangerous his actions were in smashing the windshield as he did, creating a real risk of a serious accident. In the circumstances, the only logical conclusion is that the Member had completely lost control and was acting in an uncontrolled state of rage. This, of course, varies in a material way from the Member's description and reporting of his conduct.
- (145) I find that the Member was consistent in minimizing his extreme anger and frustration in the argument with the Complainant given the physical damage and significant danger created by the Member's actions. As a result, I am satisfied that his description of his own interactions with the Complainant were inaccurately characterized as being measured, calm and defensive. As well, the Member minimized his actions in shattering the windshield of his vehicle. Where the Member has minimized and equivocated on the anger and extreme frustration demonstrated in the company of the Complainant, the reliability and credibility of his evidence has been seriously affected.



- (146) As a result of a consideration of all of the foregoing issues, I find that there are significant credibility concerns as to whether or not the Member misrepresented, minimized or equivocated in his description and reporting of the physical interactions that he had with the Complainant, and hence the accuracy of his observations and reports concerning the same.
- (147) The Member's ability to honestly, objectively, consistently and forthrightly observe, recollect and report on the interactions with the Complainant raises serious concerns as to reliability and credibility of his evidence.
- (148) In no sense can I find that any of the Member's evidence meets the test in *Farnya & Chorny*. Rather, I find that the preponderance of the evidence of the Member, in the context of the other evidence in the FIR, would not result in a practical and informed person readily recognizing as reasonable, the evidence of the Member in the FIR, taking into consideration the circumstances and conditions outlined in that report.
- (149) As a result of the foregoing, I cannot find that the Member was a credible, reliable or trustworthy witness. I reject his evidence where it conflicts with the other witnesses who's evidence I have accepted as credible, reliable and trustworthy.

## **XI The Complainant**

- (150) Also critical to the analysis of the facts in the case is an assessment of the credibility and reliability of the Complainant. I will begin that assessment by reviewing the Complainant's evidence concerning the alleged misconduct of the Member. I will also specifically address the issues raised by Counsel to the Commissioner, and addressed by Counsel for the Member, concerning myths and stereotypes.
- (151) The evidence of the Complainant incorporated into the initial Discipline Proceeding did not apparently include her submission. However, those proceedings did include both a detailed complaint from the Complainant and an interview on that complaint with the Investigating Officer, the author of the FIR.
- (152) It is significant, and material to the credibility of the Complainant, that the initial complaint was prepared and submitted to the OPCC September 29, 2017, 6 days after the alleged misconduct by the Member. As a result, the details provided in that complaint are closely linked in time to the alleged events, the only such reports in the FIR.

- (153) Given that time frame, the reliability of the Complainant's recollection was likely much fresher. Hence, I find that her credibility is enhanced by the detail provided and timeliness of the reports made concerning the Member's misconduct.
- (154) The Complaint itself provided significantly more detail on the Complainant's entire interaction with the Member than any other source of evidence in the FIR. The Complainant was meticulous in setting out the Complainant's actions and those of other parties, including the Member.
- (155) Whether or not those reports were accurate in all respects, the Complainant demonstrated a clear ability to observe, recollect and consistently report on events material to this Review.
- (156) In both the Complaint and subsequent interview on that report, the Complainant was generally consistent on the key facts, neither minimizing her actions nor equivocating. For example, she was forthright in expressing her shock at the evolution of events with the Member, her fear and uncertainty as to how to protect herself and also addressed her angst at reporting the Member's alleged misconduct either to Seaside Police or to VPD on her return to Canada.
- (157) The Complainant's expressed reasons for concern in making such a report included uncertainty how such a report might impact on her planned application to become a police officer. In particular on this point, the Complainant noted that the application process required her to confirm whether or not she was involved in any court proceedings. The Complainant's evidence was that she was unsure what that meant in terms of reporting the Member's alleged assaults to police in Seaside.
- (158) The Complainant also addressed her concern as to the unpredictable and volatile nature of the Member's actions on the evening in question. In particular, the Complainant expressed concern as to how the Member might react were he to find out she had either sought help or reported what had taken place to the police, or friends and family.
- (159) The Complainant was clear in reporting that she had never encountered a violent situation with the Member at any earlier point in their relationship and was confused, shocked and uncertain as to how to respond to the same in order to protect herself and not jeopardize her career ambitions.
- (160) There is no dispute on the evidence that the Complainant was not intoxicated on the evening in question. As such, her ability to observe, recall and report on what had taken place was not influenced by impairment.

- (161) In light of the fact that the only other two main witnesses, Cst. [REDACTED] and the Member were both intoxicated, the Complainant was the only material witness observing events unaffected by impairment of her abilities. I find that this factor enhances the reliability of the Complainant's evidence, and hence, her credibility.
- (162) In the submissions of Counsel for the Member, an alleged inconsistency in the reporting of the number of assaults attributed to the Member was noted as material to her credibility. Specifically, it is submitted that the Complainant failed to include details of the most serious assault allegation involving strikes that the member allegedly made near the Quarry. The Complainant denied such an omission.
- (163) It is significant, however, that the inconsistency arises only in the brief report of events recorded by the Seaside Police Department and the initial report to VPD Professional Services.
- (164) The VPD initial interview was noted to be oral and not recorded. The Complainant did not initially provide a written statement but rather began the complaint process with a series of calls and oral reports of the alleged misconduct of the Member.
- (165) The Seaside Police Department report is, however, not a transcript of an interview, nor does it set out a written statement from the Complainant. Rather the Seaside report was a summary of an officer's recollection of his interview of the Complainant. I find that such is not material in considering the consistency of the Complainant's evidence. It is not material as it is clear that the investigative steps taken by the Seaside Police Department were very limited when compared with the efforts of the author of the FIR. At best, the report prepared by Seaside Police has value as a third party collateral report.
- (166) Credibility issues do arise, however, when considering the evolution of events and actions taken by the Complainant as she and the Member returned to their hotel room. Those concerns are as follows:
- (a) First, the Complainant having allegedly suffered three serious assaults from the Member on the drive home from the pub returns with him to their hotel room;
  - (b) Second, while still absorbing the effects of the assaults, the Complainant used the Member's phone to engage in a text and phone exchange with Ms. [REDACTED] the Member's other love interest;
  - (c) Third, the Complainant attempted to explain that she had not contacted Ms. [REDACTED] to create a crisis and confrontation with the Member by disclosing his apparent lies. Rather she explained that she had done so to advise Ms. [REDACTED] that she was leaving the Member to her and wanted to minimize the impact of the affair on Ms. [REDACTED] and her children; and
  - (d) Fourth, notwithstanding alleged serious assaults, mood swings and the actions of the Member in the hotel room, the Complainant nonetheless did not leave for safety and in fact slept in the same bed with the Member until morning.

(167) On the face of it, such actions might be considered to be inconsistent with normal expectations of a person claiming to be the victim of a series of assaults. However, such expectations are likely to be based a “myth or stereotype” of how a woman would be expected to react in the situation facing the Complainant. The law is clear that such are inappropriate generalizations that can improperly undermine the credibility of a witness.

(168) As an example, the fact that the Complainant did not immediately leave the Member’s presence or call police is an overly simplistic stereotype of how a woman suffering abuse might be expected to react. Analysis of the actions of a person suffering alleged abuse must, of necessity, take into consideration the actual facts all of the relevant circumstances including the physical environment, the nature of the alleged abuse suffered, the anticipated risks of flight or pleas for immediate help and the actions of the alleged abuser. In some circumstances it may simply not be possible for a person suffering abuse to act as others may think they should. To rely on “expected” reactions inappropriately engages the risk of stereotypes arising in evaluating credibility solely on the basis of how a person did, or did not, react to a crisis, and is incorrect.

(169) As such, I find that the expectations noted above, and referenced in the Discipline Decision, are not be correct in considering the Complainant’s credibility. I find that such is the case taking into consideration that with respect to the Complainant’s circumstances:

- I .The Complainant was in a state of shock having been allegedly struck by her purported boyfriend on a romantic getaway in a foreign country;
- li. The Complainant had not experienced any prior violence with the Member and had difficulty accepting that such had taken place;
- lii .The Member was highly intoxicated and evidencing significant mood swings from violent, to pleading, leaving the Complainant uncertain what to expect next;
- iv. The Complainant was concerned that her application to become a police officer might have been affected by reporting a domestic violence issue;
- v. The Complainant was uncertain as to how the Member might react if he had learned of a complaint to police; and
- vi .The Complainant was at that point, a person of limited resources, in a foreign country, far from immediate help that might otherwise have been available from friends or family.

(170) However, recognizing the risks of using myths and stereotypes does not explain one aspect of the Complainant’s actions: the rationale for contacting Ms. [REDACTED]. The purported excuse for contacting Ms. [REDACTED] to let Ms. [REDACTED] know of the Member’s infidelity and ultimately protect her and her children, does not have the ring of truth.

- (171) On this issue, the Complainant has acknowledged that aspects of her response on the evening in question are regretted. Specifically, the Complainant acknowledges that her contact with Ms. ██████ should have been handled differently.
- (172) The true motivation for contacting Ms. ██████ was more likely to be related to further shock suffered by the Complainant in discovering another love interest of the Member. She had an obvious interest in understanding the actual circumstances the Member was facing. Equivocation on that point diminishes the Complainant's credibility.
- (173) Beyond the issue of contacting Ms. ██████ Counsel for the Member raised several specific concerns relating to the actions of the Complainant in accessing the Member's phone, reading his texts and calling Ms. ██████. The submission made is that rather than assisting the Member to deal with his head injury, the Complainant quickly diverted to an attempt to create a crisis with Ms. ██████.
- (174) First, it is important to acknowledge that the best evidence in the FIR supports the conclusion that efforts were being made by the Complainant to temporarily stem the bleeding arising from the Member's head injury. Those efforts of the Complainant were followed by a conclusion that a local hospital visit may be required and that medical insurance may be needed by the Member to cover the anticipated expenses.
- (175) Second, to assist in settling the insurance issue, the Member voluntarily provided his phone to the Complainant along with his access code. There is no issue that the Complainant then left the temporarily stabilized Member to go to his car to retrieve the insurance papers.
- (176) Much has been made of the delay in text times which has led to speculation by Counsel to the Member that rather than searching for the insurance material, the Complainant was simply scrolling through the Member's phone and text records. The implicit submission is that the Complainant was not honest in describing her actions in that regard. In support of that submission, Counsel for the Member relies on the text message times reflected in the in FIR.
- (177) In fact, however, the times on the text messages, the times reported by the parties and the evidence of Ms. ██████ all diverge leaving no clear evidentiary path. For example, Ms. ██████ reports that it was an hour after she had sent the Member a "good night" message that she received a reply from the Complainant. This stands in conflict with the times reported on the text messages. As well, there is no evidence as to when the Member's cell phone was turned on and hence, when a text might have been

received and displayed by that phone. It is simply not clear on the evidence precisely when the various messages and calls took place, and also not clear how long the Complainant was engaged in communicating with Ms. [REDACTED]. In any event, I find that the timing of these communications is of little relevance to an assessment of the Complainant's credibility as she has not denied the fact of the communications.

(178) There is no doubt that the Complainant was not accurate in describing her reasons for contacting Ms. [REDACTED]. However, she had in fact been trying to assist the Member with his injury and sorting out possible insurance coverage for the same. On her return to the hotel room after seeing Ms. [REDACTED] message, the Member himself appears to have decided a hospital visit was not required. There are no other credibility issues arising from the Complainant's use of the Member's phone or access to his text messages.

(179) The Discipline Authority and Counsel for the Member both appear to have minimized the importance of the text messages between Ms. [REDACTED] her husband and the Complainant. I find that to do so was incorrect in that it minimized the corroborative value of those messages in considering the Complainant's report of her encounters with the Member. I find that the bulk of the text messages between these parties support the evidence that was outlined by the Complainant in terms of describing her general dealings with the Member, and hence, enhance her credibility.

(180) The Discipline Authority and Counsel for the Member both noted an apparent lack of evidence such as photographs related to the injuries claimed by the Complainant. It is submitted that the lack of such corroborating evidence diminishes the Complainant's credibility.

(181) It is significant, however, that the Complainant did not report visible physical injuries, but rather injuries resulting from the various assaults. I find that the absence of photographic evidence of injuries does nothing to diminish the credibility of the Complainant. Clearly it is possible for the Complainant to have been injured when assaulted by the Member without visible evidence resulting from those actions.

(182) The test applicable to examination of the Complainant's credibility of course requires that the totality of her evidence be considered. Specifically, in *Chorny* the Court said:

*"The test must reasonably subject [his] story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions"*

(183) There is no question that in some minor respects, the Complainant's evidence was exaggerated or inflammatory. However, considering the totality of the evidence, I am satisfied that a practical and informed person, fully acquainted with the circumstances and conditions facing the Complainant, would conclude that the detailed and generally consistent version of events articulated by the Complainant was "in harmony with the preponderance of the probabilities".

(184) I therefore find that the Complainant was a credible, reliable and trustworthy witness.

## **XII Credibility and Correctness of the Discipline Decision**

(185) Taking into consideration the foregoing analysis, I am satisfied that the Discipline Decision was incorrect in analyzing the credibility of the various key witnesses and the reliability of their evidence. In particular, I find that the Discipline Authority incorrectly analyzed the credibility and reliability of Cst. [REDACTED] the Member and the Complainant for the reasons set out above.

(186) As a result, I am also satisfied that the findings of the Discipline Authority were, in part, incorrect. I find that the conclusions reached by the Discipline Authority relied on an inaccurate analysis of witness reliability and credibility, and a conclusion that the reports of the Member and Complainant were essentially "even" in evidentiary value. As noted in the findings above, I cannot agree that such a conclusion is correct.

## **XIII Analysis - Misconduct Allegations**

(187) Considering the totality of the evidence in the Record and the foregoing conclusions with respect to findings of credibility, I must now turn to a review of the Misconduct Allegations.

(188) The following factual matters arising in the Record are not in dispute, namely that:

- (a) The Member and the Complainant were involved in a romantic relationship for approximately four months preceding the trip to Seaside, Oregon;
- (b) The Member booked the trip to Seaside before arriving September 22, 2017;
- (c) The Member drove his new vehicle to Seaside;
- (d) The Member and the Complainant checked into their motel, visited some of the local sites, had dinner and drinks;
- (e) September 23, 2017 the Member and the Complainant went to a local pub in Cannon Beach, Oregon to meet Cst. [REDACTED] a colleague of the Member;

- (f) After meeting Cst. [REDACTED] the Member and Complainant joined him in moving to a second pub in the same community;
- (g) At both pubs, the Member and Cst. [REDACTED] consumed alcohol resulting in both being intoxicated and impaired;
- (h) The Complainant was at no point intoxicated or impaired;
- (i) On arrival at the second pub, the Member stumbled approaching the parties table. The Member also stumbled and fell on leaving the table. None of the other parties stumbled or fell arriving at the table or leaving;
- (j) On leaving the second pub, the Member was impaired to a degree that he could not drive his vehicle and therefore asked the Complainant to drive back to their motel in Seaside;
- (k) While driving back to the motel, the Member and the Complainant got into an argument;
- (l) In the course of that argument, the Member repeatedly struck his vehicle's front windshield with his hand and shattered the same;
- (m) Upon returning to the motel room, the Member fell once more, injuring his head resulting in bleeding and the need for first aid attention;
- (n) The argument between the Complainant and the Member continued at the motel;
- (o) While that argument was continuing, the Complainant used the Member's cell phone, with his consent, to contact his medical insurance company;
- (p) In using the Member's cell phone, the Complainant contacted Ms. [REDACTED] by text and phone, and also later texted Ms. [REDACTED] stating, in part, "if anything happens to me on this trip, [the Member] did it";
- (q) The Complainant stayed with the Member at the motel room overnight leaving the next morning to return to Canada;
- (r) On her return to Canada, the Complainant asked that she be dropped at Ms. [REDACTED] home; and
- (s) September 29, 2017 the Complainant contacted VPD Professional Standards and the Seaside Police Department to record complaints concerning the Member's alleged misconduct.

(189) The remaining facts reported in the FIR and Record are in dispute. However, having considered the totality of the evidence in the Record, the assessment of the credibility of the witnesses noted above, and the submissions of the parties, I find that following facts on the disputed evidence have been proven beyond a balance of probabilities. I also find that such facts are material to a determination of whether or not misconduct has been committed by the Member:

- (a) The Member's state of intoxication at the time of leaving the second pub in Cannon Beach was significant. In fact, it was significant enough that both the Member and Cst. [REDACTED] acknowledged that the Member would not be able to lawfully operate his vehicle;



- (b) The Member's state of intoxication resulted in the Member stumbling and falling when leaving the pub. The Member was also animated and, at times, obnoxious. However, beyond those facts, there is not evidence of a material course of conduct by the Member that was otherwise disorderly or disruptive to other patrons;
- (c) In leaving the second Cannon Beach pub early in the evening, the Member asked the Complainant to drive his new vehicle back to the motel. The Complainant had never driven that vehicle, and it was dark outside;
- (d) Shortly after beginning the drive back to Seaside on the local highway, the Member and the Complainant began an argument that saw the Member react with extreme anger, frustration and rage;
- (e) During the course of the argument and while the vehicle was being driven on the highway, the Member, seated in the front passenger seat of the vehicle, punched the front windshield twice, with enough force to substantially shatter the same;
- (f) The Complainant slammed on the brakes and demanded to know what the member was doing. In response, the Member continued ranting in anger and punching the shattered windshield;
- (g) The Complainant continued driving, trying to swat the Member's hand away from the windshield. In response, the Member reached over with his left hand and smacked the Complainant on the side of her face;
- (h) The Complainant next pulled over at a Quarry, turned off the vehicle and exited walking away. She was shocked, confused and afraid;
- (i) The Member subsequently exited the vehicle and began apologizing to the Complainant. However, the argument continued;
- (j) During the course of that continued argument, the Member then "open palm smacked" the Complainant across the face with sufficient force to almost knock the Complainant to the ground. In response, the Complainant returned a smack to the Member as she began to cry;
- (k) The Member again apologized to the Complainant grabbing her in a bear hug, not immediately letting go even though repeatedly demanded by the Complainant;
- (l) The Member at this point was also crying and continuing to apologize;
- (m) The Complainant told the Member that he had to calm down and not strike the windshield or her again. The Member agreed to calm down and eventually the parties re-entered the vehicle continuing the drive back to the motel;
- (n) Notwithstanding his assurances, the Member again began ranting in anger during the drive and continued hitting the windshield;
- (o) Arriving at the Seaside motel, the parties exited the vehicle. The Member stumbled as he climbed the stairs to the room but had mellowed to some degree;
- (p) In the room, the Complainant questioned the Member as to what had just taken place. In response the Member again became angry and began yelling. In doing so, the Member hit the Complainant with a backhand smack, again to the side of her face;
- (q) The Complainant then moved to lock herself in the motel room washroom. While in that room, the Complainant could hear the Member ranting and swearing,

- followed by a loud crash. Following the crash, the Member called out to the Complainant seeking help because he was bleeding;
- (r) Exiting the washroom, the Complainant saw the Member on his hands and knees bleeding from his head. The Member had stumbled and fallen on a table hitting his head;
  - (s) The Complainant made initial efforts to stem the bleeding, however, her assessment was that further first aid or medical treatment would be needed;
  - (t) The Complainant, having gone to his vehicle to recover medical insurance documents and accessed the Member's phone, returned to the motel room where the argument resumed;
  - (u) The Complainant continued to be confused, shocked and afraid of the unpredictable actions of the Member. In the final result, the Complainant went to bed telling the Member she did not want to talk to him;
  - (v) The Member alternated between sitting on the couch and climbing onto the bed grabbing the Complainant, putting his arm around her neck, and choking her while demanding that the Complainant "tell him she loved him and that they could fix things"; and
  - (w) Ultimately the Member passed out until morning.

#### **XIV Misconduct Analysis**

(190) In completing this part of the Review of the Record, I will examine the four components of Discreditable Conduct set out in the Misconduct Allegations relating to the Member. Those four components, all alleged to have taken place September 23, 2017 in the vicinity of Seaside, Oregon, are as follows:

- (a) That the Member was belligerent and/or obnoxious in public due to intoxication;*
- (b) That the Member damaged the windshield of his car;*
- (c) That the Member had verbal arguments with the Complainant that raised public alarm; and*
- (d) That the Member used physical force on the Complainant.*

#### **XV Acting in a Belligerent and/or Obnoxious Manner**

(191) The first component of the Misconduct Allegations alleges that the Member acted in a belligerent and/or obnoxious manner in public due to intoxication.

(192) My review of the Record has resulted in the conclusion that the Discipline Authority was correct in concluding that there was insufficient evidence to support this component of the Misconduct Allegations.

- (193) Although the Member and Cst. [REDACTED] were clearly intoxicated, absent the report by the Complainant that the group was “cut off” from alcohol sales at the second pub they had visited, there is no substantive evidence of actions by the Member at the pubs rising to discreditable conduct.
- (194) Although I accept that the Member and Cst. [REDACTED] were likely loud, animated and at times obnoxious at the two pubs in Oregon, I cannot find that the actions of the Member rose to the level of discreditable conduct. Nor did such conduct have the potential to bring discredit on the VPD at that point.
- (195) I cannot find that there is “clear, convincing and cogent” evidence beyond a balance of probabilities of misconduct on the part of the Member at this point.
- (196) I therefore conclude that the Discipline Decision is correct in not finding that the Member committed Discreditable Conduct on the first component of the Misconduct Allegations.

#### **XVI                    Damage to the Member’s Vehicle Windshield**

- (197) The Discipline Decision concluded that the Member’s actions in repeatedly striking his windshield to the point of breaking the same rose to the level of Discreditable Conduct. I agree that such a conclusion was correct.
- (198) I am satisfied on the clear, convincing and cogent evidence set out in the Record, and in particular on the evidence of the Complainant, that:
- (a) After leaving the Seaside area pub, the Member was intoxicated to a degree that he could not operate his own vehicle;
  - (b) The Member had asked the Complainant to drive his new vehicle back to the motel;
  - (c) During the return drive, the Member and the Complainant began an argument that resulted in the Member becoming violently enraged;
  - (d) The Member’s rage and anger posed a significant risk to the Complainant and others using the road as the Member took out his anger on the front windshield;
  - (e) In repeated deliberate blows, the Member broke the windshield while the vehicle was being driven on a highway, at night, by the Complainant; and
  - (f) The actions of the Member in repeatedly striking and shattering the vehicle windshield were intentional and reckless as to whether or not damage would ensue from the venting of his extreme anger.

(199) The intentional actions of the Member in breaking the windshield of his vehicle was, without doubt, conduct that the Member, and any objective independent observer, would know, or ought to know, would be likely to bring discredit on the VPD, and, of course, the Member.

(200) It is patently obvious to anyone knowing of the Member's status as a VPD officer, seeing the windshield damage and knowing of the circumstances associated with that damage, that the Member's role in creating such damage would bring discredit to the VPD.

(201) At a minimum, all of those factors were known to the Complainant, a member of the public, and hence the actions of the Member have unquestionably brought discredit on VPD.

#### **XVII Arguments with the Complainant that raised public alarm.**

(202) The third component of the Misconduct Allegations relates to the violent, loud and continuing argument that the Member initiated with the Complainant after beginning the drive back to their motel.

(203) There is no question that the argument was unprofessional and uncontrolled on the part of the Member. However, there is no evidence that is clear, convincing and cogent beyond a balance of probabilities that the arguments that took place were ever heard or seen beyond the Member and the Complainant.

(204) Although clearly unprofessional, there is no evidence beyond a balance of probabilities that the dispute initiated by the Member affected any other members of the public beyond the parties to that dispute.

(205) As such, I cannot find that this component of Discreditable Conduct has been substantiated on the Record before me.

#### **XVIII Assaults on the Complainant**

(206) Unquestionably the most significant component of the Misconduct Allegations relates to the alleged multiple assaults on the Complainant by the Member.

(207) As noted above, I am satisfied that the assaults took place as alleged by the Complainant.

- (208) The evidence in the Record clearly proves beyond a balance of probabilities that the Member began a heated, volatile and animated argument with the Complainant as she drove his vehicle back to a Seaside Motel.
- (209) The argument began in the vehicle but continued as a stop took place at the Quarry, and again back at the motel. The Member acting in a rage, committed assaults on the Complainant by:
- (a) Striking the Complainant on the side of her face with his left hand while the Complainant was driving;
  - (b) Forcefully striking the Complainant with an open palm smack to the face while stopped at the Seaside Quarry;
  - (c) Grabbing the Complainant in a bear hug and holding the Complainant in that manner against her wishes while parked at the Quarry;
  - (d) Striking the Complainant with a backhand smack to the face during the continuing argument at the Seaside motel; and
  - (e) Grabbing the Complainant from the back while she lay on the motel bed, putting his arm around her neck and choking her while demanding that the Complainant comply with his demands.
- (210) I am satisfied that in committing these assaults, the Member acted intentionally and deliberately to vent his rage against the Complainant.
- (211) There exists no reasonable doubt that the Member committed multiple acts of misconduct by assaulting the Complainant as noted above.
- (212) The actions of the Member without doubt evidenced conduct that the Member, and any objective independent observer, would know, or ought to know, would be likely to bring discredit on the VPD, and the Member.
- (213) As such, I find that the Discipline Decision was incorrect in concluding that an allegation of Discreditable Conduct in relation to the assault allegations was not substantiated on the evidence in the Record by clear, convincing and cogent evidence and beyond a balance of probabilities.
- (214) Discreditable Conduct on the part of the Member in relation to the fourth component of the Misconduct Allegations has therefore been substantiated.

**XIX Analysis and Conclusion**

(215) My role in this Review on the Record has been to determine whether or not the Discipline Decision was correct, considering the Record before me, the submissions of the parties and, of course, the analysis of the Discipline Authority.

(216) Having completed that review, I find that the Disciplinary Decision made by the Discipline Authority was, in part, incorrect, for the reasons noted above.

(217) I find that the Member has committed acts of Discreditable Conduct on September 23, 2017 by intentionally:

- (a) Shattering his vehicle windshield while being driven by the Complainant; and
- (b) Assaulting the Complainant on five occasions over several hours while in Seaside, Oregon.

**XX Next Steps – Disciplinary or Corrective Measures**

(214) In order to determine what disciplinary or corrective measures are appropriate, I require further submissions from the parties based on the findings set out in this decision.

(215) I am therefore ordering that any submissions to be made by:

- (a) Counsel to the Commissioner be provided in writing on or before November 30<sup>th</sup>, 2020;
- (b) Counsel for the Member and the Complainant be provided in writing on or before December 14<sup>th</sup>, 2020.

(216) The parties will ensure that copies of their written submissions are delivered to Counsel for the Adjudicator, Mr. Waddell, and copied to the other parties.

*Brian M. Neal*

Brian M. Neal Q.C. (rt)

November 10, 2020

