REDACTED COPY

NOTIFICATION OF ORDER
SECTION 150 -*POLICE ACT*

In order to protect certain personal medical information included as part of the Record, I have ordered that no person other than the Member, his Counsel, the Commissioner, his Counsel and staff of the Commissioner may access any such information or records which are part of the Record in this matter or in the possession of a participant in an electronic or printed form. No person may publish any part of the Record, where such information would identify, or tend to identify, such medical records without such information having first been redacted to my satisfaction. Orders dated : May 2 & 28, 2021

Brian M. Neal QC(rt)
Adjudicator

OPCC File No. 2017-13965
June 17, 2021

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

AND

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

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

REASONS FOR DECISION:
DISCIPLINARY OR CORRECTIVE MEASURES
SECTION 126 OF THE POLICE ACT

To: Constable Neil Logan, Vancouver Police Department (the "Member")

And to: Mr. Kevin Woodall, Counsel for the Member ("Counsel for the Member")

And to: Mr. Greg Delbigio, Counsel to the Commissioner ("Counsel for the Commissioner")

And to: Supt. Steve Eely, Discipline Authority,
Vancouver Police Department ("Discipline Authority")

And to: Ms. Alyssa Le Blevec (the "Complainant")

And to: Mr. Clayton Pecknold, Police Complaint Commissioner (the "Commissioner"

I Overview :

(1) Following a Review of the Record associated with a misconduct complaint involving the Member, I concluded that the initial decision of the discipline authority was incorrect, in part. Specifically, I found that the discipline authority was incorrect in assessing the credibility of the various witnesses noted in the final investigation report referenced in that decision. I also found that the decision was incorrect in evaluating the alleged acts of misconduct alleged with respect to the Member involving multiple assaults on the Complainant.

(2) What follows are my reasons under s. 126 of the *Police Act* in relation to proposed disciplinary or corrective measures to be applied in connection with the substantiated misconduct of the Member. This decision takes into consideration all relevant aggravated and mitigating circumstances, including those specifically detailed in subsection 126(2).

(3) Having considered the Record, the various submissions of the parties and the factors set out in subsection 126 (2)of the Police Act, I have concluded that an approach that seeks to correct and educate the Member cannot take precedence in the circumstances of this case. I have determined that a corrective approach to discipline would, in all of the circumstances, bring the administration of police discipline into disrepute.

(4) Specifically, I have concluded that the only disciplinary sanction appropriate in the circumstances of this case is the dismissal of the Member from service as a police officer.

II History of Proceedings:

(5) On November 10, 2020 my decision (the "Discipline Decision")with respect to the review of this matter was delivered to the relevant parties, substantiating the two allegations of misconduct concerning the Member:

Discreditable Conduct on September 23, 2017 by intentionally:

(i) Shattering his vehicle windshield while being driven by the Complainant; and

(ii) Assaulting the Complainant on five occasions over several hours while in Seaside, Oregon.

(the "Substantiated Misconduct")

(6) The Discipline Decision details the prior history of these proceedings. Defined terms in the Discipline Decision have been utilized in this decision.

(7) The next stage of the process requires consideration of the appropriate disciplinary or corrective measures in accordance with section 126 of the *Police Act*.

(8) Subsequent to that decision, proceedings were adjourned to receive submissions from the parties on appropriate disciplinary and corrective measures.

(9) Submissions from Counsel for the Commissioner were received on December 9th, 2020.

(10) Submissions were expected from Counsel for the Member and the Complainant on December 23, 2020. However, on December 9, 2020, Counsel for the Member requested, and was granted, additional time to prepare submissions with a new due date of January 26, 2021. An equivalent adjournment was granted to the Complainant.

(11) A further request for adjournment and possible consideration of new evidence was received from Counsel for the Member January 21, 2021. The application was based on the recent arrest of the Member and a concern that issues of addiction may have relevance to these proceedings. That adjournment request was approved and matters were set over to January 25, 2021 for a conference call. Unfortunately, Counsel for the Member was unable to join that call and so matters were reset to January 29, 2021.

(12) On January 29, 2021, the parties again convened and learned that the Member was undertaking an assessment process for possible addiction treatment options. A further request for adjournment was made by Counsel for the Member. The adjournment was granted to February 12, 2021.

(13) Subsequent to the February 12, 2021 further adjournments were sought by Counsel for the Member to March 3, 17, 24 and ultimately April 29, 2021. Each adjournment application was based on a submission that counsel was still awaiting reports and information which, it was alleged, might have relevance as additional evidence.

(14) An order was made that Counsel for the Member assemble whatever additional evidence that the Member would seek to be included in the record of these proceedings. Counsel for the Member was directed to produce such materials and a supporting application by April 28, 2021 so that the same could be considered under section 141(4) of the *Police Act* based on actual materials, not simply submissions.

(15) On April 28, 2021, Counsel for the Member submitted two documents which were marked as “A” and “B” for identification (the “Additional Evidence”). Document “A” was a report dated March 5, 2021, Document “B” was a letter dated April 21, 2021. The documents provided detailed background on the evaluations that have been made by medical professionals and others concerning the Member and possible addiction issues.

(16) Counsel for the Member also advised that he would be seeking restrictions on access to the Additional Evidence, including restrictions on the Complainant's access to the documents.

(17) On April 29, 2021, a hearing was convened by TEAMS to permit the parties to speak to the Member's application. Also advanced at that time was an application by Counsel for the Member to restrict access to the Additional Evidence.

(18) Decision on the applications of the Member was reserved, and released May 2, 2021. In the result, the Member's application under section 141(4) was granted and the two reports were entered as exhibits in the record of these proceedings. Access was also restricted to the Member's medical information pursuant to section 150 of the *Police Act.*

(19) The application decision also set deadlines for the final submissions of Counsel for the Member, Counsel for the Commissioner and the Complainant.

(20) May 20, 2021 submissions advanced by Counsel for the Member were delivered. However, an additional document entitled "Discharge Report" dated May 19, 2021 (the "Discharge Report") was also identified by Counsel for the Member as potentially relevant that same day. Counsel sought clarification on whether or not the document could be considered in the review. Counsel was advised that an additional application to include the document as further additional evidence was required to comply with section 141(4) of the *Police Act*.

(21) Counsel for the Member made application for the admission of the additional material on May 28, 2021. Counsel for the Commissioner raised no objection to the admission of the material to the record, however, maintained his position that the weight to be accorded such material was a matter for further submissions.

(22) The Discharge Report was found to be admissible as special circumstances were found to exist. I also found that the admission of the report was, in all the circumstances, necessary and appropriate, although the issue of weight to be accorded to the contents of the report was specifically not decided.

(23) The Discharge Report and Additional Evidence, collectively referred to as the "Member's Additional Evidence", will be summarized below.

(24) Reply submissions were received from Counsel for the Commissioner June 7, 2021 and the Complainant on June 6, 2021.

(25) Counsel for the Member was extended the option of filing a final sur- reply to the filings of both Counsel for the Commissioner and the Complainant. However, on reviewing submissions, Counsel for the Member declined the right to make further submissions in reply.

III Legislative Framework:

(26) The key legislative framework governing disciplinary or corrective measures is found in s. 126 of the *Police Act*. That s. provides as follows:

> ***Imposition of disciplinary or corrective measures in relation to members***
>
> *126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under s. 113 [complainant's right to make submissions], the discipline authority must, subject to this s. and s.s 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:*
> *(a) dismiss the member;*
> *(b) reduce the member's rank;*
> *(c) suspend the member without pay for not more than 30 scheduled working days;*
> *(d) transfer or reassign the member within the municipal police department;*
> *(e) require the member to work under close supervision;*
> *(f) require the member to undertake specified training or retraining;*
> *(g) require the member to undertake specified counselling or treatment;*
> *(h) require the member to participate in a specified program or activity;*
> *(i) reprimand the member in writing;*
> *(j) reprimand the member verbally;*
> *(k) give the member advice as to her or his conduct.*
>
> *(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,*
> *(a) the seriousness of the misconduct;*
> *(b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct;*
> *(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career;*
> *(d) the likelihood of future misconduct by the member;*
> *(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence;*
> *(f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct;*
> *(g) the range of disciplinary or corrective measures taken in similar circumstances; and*
> *(h) other aggravating or mitigating factors.*
>
> *(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.*

(27) In completing my analysis, I am required to consider all aggravating and mitigating circumstances in order to determine the just and appropriate disciplinary or corrective measures in relation to the Substantiated Misconduct of the Member.

(28) If I determine that one or more disciplinary or corrective measures are necessary, s. 126(3) of the *Police Act* provides that "*an approach that seeks to correct and educate the Member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute*".

IV Member's Additional Evidence Summary

(29) As noted, the Member's Additional Evidence is comprised of three documents:

(a) A document dated March 5, 2021;
(b) A document dated April 21, 2021; and
(c) A discharge report dated May 19, 2021

(30) Each of the documents references the professional services provided to the Member in relation to the assessment, evaluation and treatment of apparent addiction issues in the spring of 2021. In that regard I note that:

(a) None of the material in the three reports have been provided under oath, nor have any of the contents been subject to review by the Investigator under the Final Investigation Report, nor cross examination by any party. It is acknowledged, however, that some of the material referenced in the Final Investigation Report was assembled in the same circumstances;
(b) In particular, none of the factual information apparently provided by the Member in the context of his evaluation and treatment has been provided under oath, reviewed by the Investigator or the subject of cross examination. In fact, it appears that very little of the information reported in the documents arising from the Member in the additional material was part of the original Record;
(c) The first document, the "Independent Medical (Substance Use) Evaluation", **REDACTED**;
(d) The report indicates that the request for an assessment arose **REDACTED**;
(e) The first report is **REDACTED**. Again, very little of that information has been corroborated in any fashion, nor have those details been subject to investigation or cross examination;

(f) In relation to the matters of concern to this decision, the only apparent references in the material are found at pages 20 and 21;
(g) **REDACTED**.
(h) **REDACTED**.
(i) **REDACTED**;
(j) **REDACTED**; and
(k) **REDACTED**.

(31) **REDACTED**

(32) Again, none of the comments made or conclusions reached in this report have been the subject of review by the Investigator, nor tested under cross examination. It also appears that much of the detail in the short report relies on self-reporting from the Member on various issues.

(33) **REDACTED**.

(34) **REDACTED**.

(35) **REDACTED**. As with the other reports, there has been no investigation or cross examination on any of the details in the document.

(36) There is no doubt that the Member has been evaluated and treated for a variety of issues over the past three months. **REDACTED**.

(37) Counsel for the Member correctly submits that the law does not require a direct causal link between a mental disorder and action resulting in misconduct, or criminal conduct, in order for such a disorder to be relevant as a mitigating circumstance in considering sanctions for misconduct. As well, Counsel further submits, correctly, that the Member is not required to prove that **REDACTED** were the sole cause of his misconduct.

(38) The submission of Counsel for the Member is that the Member need only show a substantial connection between **REDACTED** and his misconduct. Counsel relies on *Health Employers Assn. of British Columbia v B.C.N.U*. 2006 BCCA 57. Specifically, it is submitted that:

> *"the test adopted by the Court of Appeal was not whether the addiction caused the misconduct, but whether there was a connection between the misconduct and the addiction.*"
> (Submissions of Counsel for the Member, paragraph 53.)

(39) Counsel for the Member details in his submissions **REDACTED**

(40) It is noteworthy, however, that other than self-reporting from the Member, there is no cogent and clear link or connection in the Member's Additional Evidence **REDACTED**

(41) Counsel for the Member notes that the Member **REDACTED** it has not been possible to obtain an affidavit from the Member on his background. The argument made is that Counsel submissions should have sufficient weight in these circumstances, much like submissions made in sentencing on criminal matters.

(42) The difficulty with the last noted position of Counsel for the Member is that even an affidavit, if produced, would not been tested by investigation or cross examination. What we are left with, therefore, are self-reporting by the Member, analysis by medical professionals and others based on that self-reporting, tests administered by the medical professionals and the submissions of Counsel.

(43) Counsel for the Commissioner denies that the Member's Additional Evidence has any weight or relevance to the substantiated misconduct of the Member. Specifically, at paragraph 27 of the Commissioner's June 6, 2021 submissions Counsel notes as follows:

"***REDACTED***. *Instead, what has been made clear is that [the Member] has not accepted responsibility for that conduct. In appropriate case, cogent evidence of* ***REDACTED*** *might serve as mitigation of what is otherwise serious misconduct. But that evidence does not exist in the present case*"

(44) Counsel for the Commissioner further notes at paragraph 5 (d) of the Commissioner's submissions a passage from the Member's Additional Evidence as follows:

REDACTED

(45) Having considered the Member's Additional Evidence, and the submissions of both Counsel, I find that there is no cogent or credible evidence, beyond a theory, establishing a link or connection between the **REDACTED** issues claimed to be relevant by the Member and the violent abuse suffered by the Complainant.

(46) Collectively, I find that the Member's Additional Evidence is of very limited weight or relevance to the issues that resulted in the assaults on the Complainant in 2017 and the substantiated misconduct allegations against the Member.

V Nature of the Misconduct

(47) The key findings of fact relating to the Substantiated Misconduct concerning the Member as set out in the Discipline Decision are summarized as follows:

(a) The Member and the Complainant were involved in a romantic relationship for approximately four months preceding a weekend 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 with the Complainant;
(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, a colleague of the Member;
(f) After meeting the colleague, the Member and Complainant joined him in moving to a second pub in the same community;
(g) At both pubs, the Member and his friend consumed alcohol resulting in both being intoxicated and impaired;
(h) The Complainant was at no point 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) 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 his colleague acknowledged that the Member would not be able to lawfully operate his vehicle;
(k) 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;
(l) On leaving the second Cannon Beach pub early in the evening, the Member recognizing his impairment, asked the Complainant to drive his new vehicle back to the motel. The Complainant agreed, however, she had never driven that vehicle, particularly not at night;
(m) 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;

(n) 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 sufficient force to substantially shatter the same;
(o) The Complainant slammed on the brakes and demanded to know what the Member was doing. In response, the Member continued ranting in anger and again punched the shattered windshield;
(p) 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;
(q) The Complainant next pulled over at a Quarry, turned off the vehicle and exited walking away. She was shocked, confused and afraid;
(r) The Member subsequently exited the vehicle and began apologizing to the Complainant. However, the argument continued;
(s) During the course of that continued argument, the Member then "open palm smacked" the Complainant across the face with sufficient force to almost knock her to the ground. In response, the Complainant returned a smack to the Member as she began to cry;
(t) The Member again apologized to the Complainant grabbing her in a bear hug, not immediately letting go even though repeatedly demanded by the Complainant;
(u) The Member at this point was also crying and continuing to apologize;
(v) 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;
(w) Notwithstanding his assurances, the Member again began ranting in anger during the drive and continued hitting the windshield;
(x) 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;
(y) 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;
(z) 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;
(aa) 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;
(bb) The Complainant made initial efforts to stem the bleeding, however, her assessment was that further first aid or medical treatment would be needed;
(cc) 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;

(dd) 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

(ee) Ultimately the Member passed out until morning.

(48) Also, of relevance, are the conclusions reached at paragraphs 139-145 of the Discipline Decision as follows:

> *(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 a 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.*

(49) As noted in the Discipline Decision, I am satisfied that in committing the assaults forming part of the Substantiated Misconduct, the Member acted intentionally, and deliberately, venting his rage against the Complainant over several hours.

(50) As well, I am also satisfied that the strikes were hard enough, and delivered with sufficient force, to actually shatter a large portion of the windshield of the Member's new vehicle.

(51) 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 in a. physical manner.

(52) 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".

(53) 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.

(54) Again, as noted in the Discipline Decision, I have found that the Member is, of course, a trained policing professional. He must be taken to have known of the extreme 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 have known 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 was acting in a uncontrolled state of rage. This, of course, varies in a material way from the Member's description and reporting of his conduct.

(55) In addition to the foregoing, I also found 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 his actions. As a result, I concluded that his description of his own interactions with the Complainant were inaccurately characterized as being "measured, calm and defensive".

(56) I concluded that the Member minimized his actions in shattering the windshield of his vehicle. I also found that where the Member minimized and equivocated on the anger and extreme frustration demonstrated in the company of the Complainant, the reliability and credibility of his evidence had been seriously affected

(57) Finally, I concluded that 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.

VI Submissions of Counsel for the Commissioner

(58) The submissions of Counsel for the Commissioner are comprised of an initial filing and a reply to the arguments advanced by Counsel for the Member.

(59) It is the position of Counsel for the Commissioner that the application of corrective measures to the facts of this case are completely inappropriate. Counsel specifically submits that disciplinary measures must take precedence to avoid bringing the administration of police discipline into disrepute.

(60) Counsel for the Commissioner submits that the only appropriate disciplinary outcome in this case is the dismissal of the Member. This submission is based on a consideration of the nature and extent of the assaults on the Complainant. It is also submitted that the facts relevant to the Member's misconduct and submissions of the Member are reflective of his enduring failure to accept responsibility for the assaults on the Complainant. It is further submitted that such is also evidence of the Member's continuing lack of insight into the significance of his misconduct.

(61) It is specifically submitted by Counsel for the Commissioner that the following aggravating circumstances exist:

a. The assaults were repeated. These incidents were not a single or isolated instance of a loss of control;
b. The assaults occurred at multiple locations and over a prolonged period of time;
c. The assaults were forceful and violent standing in marked contrast to an assault which is a push or shove in a moment of frustration. It is simply good fortune that the Complainant did not suffer more serious injuries;

d. The assaults and surrounding events have caused very significant emotional trauma to the Complainant;
e. The assaults were against a vulnerable intimate partner;
f. The circumstances under which the assaults occurred made the Complainant particularly vulnerable. They occurred at night, in a car, near the quarry and at the hotel where no one else was present;
g. Complainant vulnerability was further increased by the fact that she had traveled alone with the Member and was out of the country;
h. The Member consumed alcohol but otherwise, his rage and loss of self-control is not explained;
i. The Member has not demonstrated any remorse, acceptance of wrong doing, responsibility for his actions or insights into the harm he caused;
j. While the Member has the legal right to defend against allegations, the fact that he was disbelieved is highly aggravating. A police officer holds a position of trust and authority and the public's trust in policing will be lost if a police officer cannot be believed; and
k. In the present case, the findings against the Member's credibility and reliability go to his character.

(62) With respect to the Member's submissions on mitigating factors, including claimed **REDACTED**, Counsel for the Commissioner submits that the evidence of such issues has little weight or relevance. At paragraph 27 of the Commissioner's submissions, reference is made to the Member's Additional Evidence:

> *27.The reports tendered by Cst Logan do little to illuminate what might have caused or contributed to his serious misconduct other than sheer bullying and aggression. Instead, what has been made clear is that Cst. Logan has not accepted responsibility for that conduct. In appropriate cases, cogent evidence of **REDACTED** might serve as mitigation of what is otherwise serious misconduct. But that evidence does not exist in the present case and, appropriate discipline for that very serious misconduct is dismissal.*

(63) Counsel for the Commissioner submits that discipline outcomes are always case specific. Specifically, it is argued that:

> *" the question to be considered is whether a reasonable man or woman, aware of all of the relevant circumstances, would regard the omission to impose the sanction of dismissal in the circumstances of the case as undermining public confidence in the administration of police discipline."*
> *OPCC File No 2017-13521*

(64) Counsel notes, at paragraph 26 of his supplemental submissions that the remedy of dismissal has been applied in at least two cases:

> *26.Further, there are cases in which members have been dismissed. For example, in the Decision on Review of the Record (OPCC File No. 2013-8599, June 26, 2015, Cst. Gomes)) and Decision on Review of the Record (OPCC File No. 2014-9552, May 10, 2017, Cst. Thandi), dismissal was upheld*.

(65) The specific submissions of Counsel for the Commissioner on the various factors in subsection 126(2) of the Police Act in the context of submissions advanced by Counsel for the Member and the Complainant will be outlined further in this decision.

VII Submissions of Counsel for the Member

(66) The submissions of Counsel for the Member can be summarized as follows:

(a) Counsel acknowledges the very high importance that society places on denouncing and deterring violence un relationships;
(b) Counsel notes that section 126(3) of the *Police Act "directs Adjudicators to give correction and education precedence over punishment*";
(c) Counsel submits that the Member "has no prior substantiated findings of misconduct on his service record of discipline, and has received favourable appraisals from his superiors";
(d) Counsel notes that "the misconduct, while deplorable, occurred on a single day when a great deal of alcohol was consumed";
(e) Counsel observes that the Member **REDACTED**; and
(f) Counsel submits that rather than dismissal, the appropriate disciplinary and corrective measures would be a lengthy suspension or reduction in rank.

(67) Specific submissions are summarized as follows:

> *58. The misconduct that Cst. Logan has been found to have committed is serious. All violence in relationships is serious. The Police Complaint Commissioner argues at length that society places a high importance on denouncing violence in relationships. That is common ground between the parties. There can be no question that the disciplinary and corrective measures in this case must denounce the misconduct and Cst. Logan.*
>
> *59. However, the seriousness of the conduct does not, by itself, set aside the philosophy that underlies s. 126(3) of the Police Act, that correction and education take precedence over the purely punitive. First, as retired Judge Pendleton noted, dismissal is the opposite of correction and education. Second, the Police Act does not state that there is an automatic minimum penalty for any form of misconduct. In the eleven years since the*

Police Act was significantly amended (in 2010) the legislature could have provided automatic minimums for specific forms of misconduct or, without specifying automatic minimums, state that when certain forms of misconduct have been committed, correction and education do not take precedence over punishment of the member.

60. It is common ground between Police Complaint Commissioner and the member that the disciplinary and corrective measures must be such that there is no suggestion that the conduct is condoned. A finding of misconduct is not condonation. A lengthy suspension would not be condonation.

61. Therefore, it is submitted that the disciplinary and corrective measures in this case should be a lengthy suspension or reduction in rank.

(68) Counsel for the Member identified a number of decisions submitted to be relevant to the facts of this case supporting the Member's argument:

54. A number of cases illustrate the philosophical divide between retired judges who are considering the effects of mental illness, PTSD, addiction to alcohol, and addiction to drugs. In the case of Cst. Tyler McCluskie of the Vancouver Police Department RR 19-01, OPCC File 2017-14620, a police officer drove his truck while impaired. He crashed it in a single vehicle collision. During the investigation he persistently tried to persuade the investigators to pretend that the roadside screening device did not work, and not to submit a report abut the incident, conduct that the Police Complaint Commissioner argued amounted to obstruction of justice. The Police Complaint Commissioner asked for a 30-day suspension. The retired judge considered the member's struggle with alcohol addiction, and concluded that the attempt to obtain preferential treatment, and she took into account both the fact that he had undergone residential treatment, and that he would be subject to a stringent "return to work agreement" that would ensure that he continued to comply with his alcohol rehabilitation regime. The residential treatment and the return to work agreement addressed the objectives of correction and education. In the result, the additional disciplinary and corrective measures was a three day suspension.

55. In Cst. Geoffrey Young of the Delta Police Department OPCC File No. 2015-11249 the member had become addicted to opioids. On a number of occasions he forged prescriptions, or altered prescriptions he had legitimately received from his physician. When he was caught on - 17 - one occasion at a pharmacy, he lied to the RCMP. The Police Complaint Commissioner argued that he should be dismissed. Retired Judge Lazar ordered that Cst. Young receive advice as to future conduct for the falsified prescriptions, and a three day suspension for lying to the RCMP.

56. In Constable Brad Meyer of the Victoria Police Department it was alleged that a member had committed a number of allegations of misconduct in which he became abusive and aggressive to fellow police officers or members of the pubic. The Discipline Authority sought a penalty of dismissal. Retired Judge Lazar took into account the member's history of PTSD, and imposed a two-day suspension, and directions that he pursue a rehabilitation program upon his return to work.

57. As noted earlier, s. 126(3) of the Police Act provides that measures that seek to educate and correct must take precedence over punishment. There are only two exceptions: (1) where a corrective or educational approach would be "unworkable"; and (2) where such an approach would bring the administration of police discipline into disrepute.

(69) On the specific issue of consideration of dismissal as opposed to other sanctions available under section 126, Counsel for the Member places high reliance on a recent decision of Adjudicator Pendleton in OPCC file 2017-13521. I will address those submissions in further detail in the detailed review of section 126.

(70) As requested, Counsel for the Member has provided specific submissions on the various factors in subsection 126(2). I will review those submissions in the context of the submissions received from Counsel for the Commissioner, and the Complainant.

VIII Submissions of the Complainant

(71) Subsection 141(7) of the *Police Act* creates the authority for the Complainant to be permitted *"to make submissions on the matters under review".* As noted in earlier decisions in this matter, I have extended that right to the Complainant both with respect to oral and written submissions.

(72) On receipt of the Complainant's submissions on the section 126 issues, it was noted that there were aspects of those materials that referenced evidence and reports that were not set out in the Record. All parties were immediately advised that my review of section 126 matters would not consider evidentiary matters referenced by the Complainant beyond those set out in the Record.

(73) The Complainant supports the position advanced by Counsel for the Commissioner that the only appropriate sanction arising from the Member's misconduct is his dismissal. She notes, in significant detail, the profound impact the Member's assaults have had on her life. The Complainant's specific submission is that the only disciplinary action that will promote police accountability, deterrence and ensure public confidence in policing is the dismissal of the Member

(74) I will reference the specific submissions of the Complainant later in this decision as I consider the various factors under section 126 of the *Police Act*. However, it is important to note that throughout the Complainant's submissions, reference is made to her position that the Member's misconduct has had a profound effect on the Complainant as a victim of intimate partner violence.

VI Aggravating and Mitigating Circumstances

(75) I will now turn an analysis of the relevant factors set out in s. 126 of the *Police Act*.

(i) Seriousness of the Misconduct s. 126(2)(a)

(76) All parties appear to agree that the findings of fact relevant to the imposition of disciplinary and corrective measures are serious. The appears to be further agreement with the principle that when a police officer commits acts of violence in a relationship, there will be serious consequences and a need for denunciation.

(77) Counsel for the Member submits, however, that the assaults in question happened only over a single day. Furthermore, it is submitted that other cases involving serious, ongoing and pre-meditated spousal abuse and violence did not result in dismissal for the officer concerned. Finally, Counsel for the Member notes that the connection of the facts to a **REDACTED** may mitigate the seriousness of the sanction to be imposed.

(78) As noted above, Counsel for the Member also submits that the seriousness of the misconduct does not, however, automatically lead to the conclusion that dismissal is the only reasonable disciplinary and corrective measure. Counsel notes a number of other cases that, it is submitted, also raised serious member misconduct, including serious pre-meditated spousal abuse and violence that did not result in the dismissal of the officer concerned.

(79) Counsel for the Commissioner submits that the Member's misconduct was serious as it involved intimate partner violence. Reference is made to Canada's changing attitudes to such violence as reflected in Bill C-75. Counsel further noted a 2020 publication on *the Status of Women in Canada* which details and recognizes the serious nature of intimate partner violence:

> "*The World Health Organization (WHO) identifies IPV as a major global public health concern, as it affects millions of people and can result in immediate and long-lasting health, social and economic consequences IPV impacts people of all genders, ages, socioeconomic, racial, educational, ethnic, religious and cultural backgrounds. However, women account for the vast majority of people who experience this form of gender-based violence and it is most often perpetrated by men*."

(80) And further Counsel notes the following extracts from that same report:

> *• Intimate partner violence accounted for about one-third (30%) of all incidents of violent crime reported to the police in 2018.*
>
> - *Police-reported data show that in 2018, 99,452 people in Canada experienced intimate partner violence. Women were the vast majority of those who experienced this form of violence, accounting for 79% of survivors (78,852 women versus 20,600 men).*
> - *Rates of police-reported IPV in 2018 were about four times higher for women than for men in Canada (507 versus 134 incidents per 100,000 population).*
> - *Among women in 2018, the highest rate of police-reported IPV was observed for women aged 25 to 34 years (1,104 incidents per 100,000 population). Women living in rural areas also showed higher rates of IPV than their urban counterparts (789 versus 447 incidents).*
> - *Self-reported data from the 2014 General Social Survey (GSS) show that Indigenous women were three times more likely to have experienced spousal violence than non-Indigenous women.*
> - *Results from the 2014 GSS also indicate that women living with a disability were twice as likely as women without a disability to have experienced intimate partner violence. According to 2018 police-reported data, the most common form of IPV experienced by women was physical assault (373 incidents per 100,000 population). The highest rate of physical assault was observed against women aged 25 to 34 (829 incidents per 100,000).*
> - *Police-reported data for 2018 show that rates of intimate partner sexual assault were almost 30 times higher for women than men (29 incidents versus 1 per 100,000 population). Rates of sexual assaults were the 16 https://cfc-swc.gc.ca/violence/knowledge-connaissance/ipv-vpi-en.html highest among women aged 15 to 24 (50 incidents per 100,000 population).*
> - *Intimate partner violence most often occurred at a private residence (84%) in 2018. Police-reported data show that among people who experienced IPV, half did so in a home they shared with the accused (50%) and about one-third in a home not shared with the accused (30%). For one in ten victims (10%), the violence took place in an open area such as a street, park, or parking lot.*
> - *Residential facilities for victims of abuse (for example shelters) across Canada reported over 68,000 admissions in 2017-2018, the vast majority being women (60.3%) and their accompanying children (39.6%).*
> - *In 2009, the estimated total cost of IPV in Canada was $7.4 billion (includes estimates for pain and suffering, as well as direct costs such as medical care costs and lost productivity).*

(81) Counsel for the Commissioner further argues that a 2010 publication entitled *"Violence Against Women in Relationships"* raises disturbing statistics on the subject of intimate partner violence:

> "In domestic violence situations, violence is commonly used by one person to establish control over their partner or to control their partner's actions. These tactics are often successful because of the fear and isolation a victim feels. No matter which form it takes, the dynamics of abuse in domestic violence situations differ significantly from other crimes. The victim is known in advance, the likelihood of repeat violence is common and interactions between the justice system and the victim are typically more complex than with other crimes. Research indicates, for example, that 21 per cent of women who are spousal violence victims experience chronic assaults (10 or more).1When violence occurs, there is usually a power imbalance between the partners in the relationship. It may be extremely difficult for a victim to leave the relationship due to feelings of fear and isolation as well as cultural/religious values, socioeconomic circumstances, or even denial of the violence. Violence often escalates over time and may continue or even worsen if the victim attempts to leave the relationship causing the victim to stay or return. Similarly, concern for the safety of children may make it difficult for the victim to leave. The threat of violence to the children may be used by an abusive partner seeking power and control. Despite the harm that the abuse may have caused and the risk of continued or more serious harm, the dynamics of the relationships in which these crimes arise may result in the victim's reluctance to fully engage with the police or Crown counsel in the investigation and prosecution of these crimes. Research suggests that nearly two-thirds of women (64 per cent) who are victims of a spousal assault do not report the violence to police. There are a number of reasons, including fear of escalation in the violence or the potential for threats of violence directed toward children.
>
> The majority of domestic violence cases in the criminal justice system involve female victims. As a whole, women continue to be more adversely impacted by domestic violence than men. This view is supported by research findings that: The majority of victims of police-reported spousal violence continue to be women, accounting for 83 per cent of victims in 2007. Women are more likely than men to be victims of spousal homicide. In2007, almost four times as many women were killed in Canada by a current or former spouse as men. Of the 73 domestic violence homicides occurring between January 2003 and August 2008 in British Columbia, 55 involved a female victim. In domestic violence situations, women are more than twice as likely as men to be physically injured, three times more likely to fear for their lives and six times as likely to seek medical attention."

(82) The substance of the submissions of Counsel for the Commissioner is that intimate partner violence is extremely serious and further, that the law must keep up with social change and the recognition of this critically important development in Canadian society. Specifically, it is suggested that there is nothing that justifies intimate partner

violence and that denunciation and deterrence in connection with such matters must be a paramount consideration, particularly when police misconduct is involved.

(83) The Complainant supports the position that domestic violence is "an incredibly serious matter". Her submissions reflect the trauma she experienced as a result of the Member's assaults and the enduring effects of those assaults. Again, I will comment further on the details of the Complainant's submissions in consideration of the various section 125(2) *Police Act* factors.

(84) Having considered the circumstances of this case and the submissions of the parties, it is my finding that the Member's misconduct was indeed extremely serious. It was serious because it clearly involved violence and trauma inflicted on an intimate partner of the Member in circumstances where she was extremely vulnerable. The assaults took place over an extended period of time and reflected a pattern of abuse and control that left the Complainant with limited options to protect herself. In assaulting the Complainant, the Member acted in a rage evidenced 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.

(85) The result of these assaults was significant emotional trauma for the Complainant which appears to endure to this day, almost four years after the events in question.

(86) Intimate partner violence is clearly a serious societal issue. It is significantly more serious when committed by a police officer. Officers are required to respond to and investigate issues of domestic abuse as a regular part of their duties. There can be no doubt that if members of the public were aware that an officer had assaulted an intimate partner multiple times, confidence in that officer and policing in general, would be seriously compromised.

(87) Whether on duty or off, any intimate partner violence on the part of a police officer is a serious breach of the trust and confidence that the public places in such persons. It is particularly serious where such violence is inflicted upon a profoundly vulnerable partner.

(88) I find, therefore, that in all of the circumstances, the seriousness of the Member's misconduct was at the high end of the spectrum of misconduct. It is, therefore, a significant aggravating factor in these proceedings.

(ii) Record of Employment s. 126(2)(b)

(89) The information made available to these proceedings concerning the Member's record of employment confirms that the Member had been employed as a police officer with the Vancouver Police Department since 2010.

(90) Counsel for the Member submits that at the time of the incident involving the Complainant, there were no substantiated allegations of misconduct on the Member's Service Record of Discipline.

(91) Although Counsel for the Member may be correct that there was no substantiated allegation of misconduct on the Service Record of Discipline when the Member assaulted the Complainant, such an entry exists now. The current Service Record of Discipline confirms a substantiated allegation of misconduct by way of a Public Trust breach characterized as an abuse of authority. Adjudicator Baird Ellan imposed an 8 day suspension on the Member as a result of that finding. The Adjudicator also ordered specified retraining for the Member and directed that he:

> *(a) work under close supervision for a minimum of one year or until the specified retraining is completed, whichever is longer; and*
> *(b) not advance in rank or participate in Acting Sergeant duties within the period specified in (a), and, following that, until assessed by the appropriate department personnel as ready to do so after giving due consideration to the decisions in this matter, [his] service record of discipline and [ ] performance in the retraining specified in (a).*

(92) Counsel for the Member takes the position that the Service Record of Discipline entry is not relevant to nor properly considered as part of, these proceedings as the entry did not exist when the misconduct in these proceedings took place.

(93) With respect, I must disagree with that position. Section 180 (3)(i) of the *Police Act* provides that a member's service record of discipline is to be provided to an adjudicator conducting a Review on the Record. There is no qualification in that section or any other to support the position taken by Counsel for the Member. Subsection 126(2)b further confirms that I am required to consider material aspects of the Member's record of employment. There is nothing in the *Police Act* that supports the position of Counsel for the Member that the Service Record of Discipline of the Member only has relevance before the misconduct under review has taken place. I find

that the Member's Service Record of Discipline has clear relevance as an aggravating factor in these proceedings. It has relevance as I am considering the appropriate sanction to be imposed now, not when then misconduct took place.

(94) Mitigating elements of the Member's employment history include performance appraisals included as part of the Final Investigation Report and submissions of Counsel for the Member.

(95) The reports are generally positive, however, the reports cover only the periods for 2010, 2011, 2012, 2014, 2015, 2018, 2019.

(96) According to these reports, the Member was off on leave recovering from an injury from December 2014 to January 2016.

(97) It is noteworthy, however, that there is no reference in the reviews of the Member's performance to the misconduct allegations of the Complainant, or the now substantiated abuse of authority misconduct allegation that took place in 2016. It is not clear why the existence of such complaints would not be relevant to the review of the Member's performance.

(98) Counsel for the Commissioner made no specific submissions on this factor.

(99) The Complainant submitted that the performance reviews raise the question as to how the Member could take on more substantial duties while active investigations into his conduct were underway. In fact, the Complainant states at paragraph 8 of her submissions:

> *"The fact that [the Member] remained on active duty during the investigation and subsequent process was already incredibly inappropriate in my opinion, but to now find out that he was promoted to a formal leadership role and was overseeing other officers during this same period is abhorrent"*

(100) Considering all of the foregoing, I cannot find that the Member's record of employment has a mitigating effect on these proceedings. Although there are complimentary notations in the performance reviews on record, the materials in question do not note or address the disciplinary issues relevant to the Member in his service with VPD, for reasons unknown. As such, the records cannot be taken as a reliable indicator of the Member's actual prior performance in policing.

(101) The Service Record of Discipline is, however, an aggravating factor. The Member's misconduct in 2016 which was found to have been an abuse his authority, has direct relevance to the matters currently under review.

(iii) Impact of Proposed Measures on Member, His Family and His Career (s. 126(2)(c)

(102) Counsel for the Member submits that the findings of misconduct themselves will have a significant disciplinary effect on the Member, as it will form part of his Service Record of Discipline for at least five years.

(103) Counsel also submits that dismissal from service as a police officer could potentially thwart the Member's rehabilitation efforts and deprive him of income and crucial benefits at the initial stages of his recovery. As well, it is submitted that a dismissal would effectively end the Member's career in policing, a severe consequence to the Member and his family.

(104) Counsel for the Member submits that a suspension from service without pay could have a very significant negative financial effect on the Member.

(105) Counsel for the Commissioner submits that "termination from employment will always have a negative impact upon a member and his or her family" OPCC supplemental submissions, para 19.

(106) The Complainant maintains that this factor has minimal weight in considering the factors under section 126(2). While the Complainant acknowledges the seriousness of losing a career, the submission is that the Member alone is responsible for those consequences.

(107) I find that the potential impact of a dismissal can be very serious for the Member in terms of income, benefits and future employment prospects. A suspension from service without pay would also have a significant effect on the Member's financial affairs.

(108) I am also aware of submissions from Counsel for the Member that sanctions such as dismissal arising from these proceedings may have a serious impact on the Member's recovery from the issues identified in **REDACTED**.

(109) In all of the circumstances, I find that the impact of a suspension, demotion or dismissal from service could have serious consequences for the Member, and are properly raised as a mitigating factor.

(iv) The Likelihood of Future Misconduct by the Member (s.126(2)(d)

(110) Counsel for the Member submits that the Member has no prior substantiated misconduct and that the likelihood of future misconduct is low. Counsel submits that the incidents in question took place in a "*highly charged emotional setting*" resulting in misconduct out of character for the Member.

(111) In further support for the submission that the likelihood of further misconduct is low, Counsel for the Member references the conclusions of **REDACTED**

(112) Counsel for the Commissioner submits that:

> *"there is a heightened risk of future misconduct because there has been no full acceptance or acknowledgement of the present misconduct.* ***REDACTED*** *(OPCC supplemental submissions, para 21.)*

(113) The Complainant submits that the Member's continued denial of the assaults on her raise serious concerns as to the risk of future misconduct. Specifically, the Complainant comments that she believes that the Member's lack of remorse, failure to accept responsibility, continued attempt to blame and discredit the victim's reputation show that the Member is at a very high risk of future misconduct.

(114) I find that the Counsel for the Member was incorrect in concluding that the Member had no prior substantiated findings of misconduct. As noted earlier, the Service Record of Discipline clearly shows an entry for an "Abuse of Authority" arising from a 2016 incident with associated sanctions. The misconduct finding relates to an unnecessary use of force by the Member approximately eighteen months before the Substantiated Misconduct. I conclude that such findings have direct relevance to the likelihood of the Member's future misconduct and confirm the serious risk posed by the existence of such an issue.

(115) REDACTED

(116) **REDACTED**, there appears to be little evidence, in any form, that the Member has recognized and addressed his issues with intimate partner violence. Hence, in my view, the risk of another such incident remains very real.

(117) Finally, the complete failure of the Member to acknowledge or admit his misconduct, other than the windshield damage, and his consistent attempts to place blame on the Complainant, confirm that there has been no genuine awareness or understanding of the seriousness of the assault misconduct.

(118) Although the submissions of Counsel for the Member do, to some extent, acknowledge these issues, I am not satisfied that the Member genuinely understands or accepts the significance of his misconduct. As such, that lack of insight confirms the existence of an ongoing risk of future misconduct.

(119) As such, I conclude that the real risk of further misconduct is a serious aggravating factor.

(v) Whether the Member Accepts Responsibility for the Misconduct and is Willing to Take Steps to Prevent its Recurrence (s. 126(2)(e)

(120) The submissions of Counsel for the Member on this point are as follows:

> *25.[the Member] attended a prehearing conference where he agreed to disciplinary or corrective measures even though he did not accept that had committed all of the misconduct alleged.*
> *26.It is submitted that [the Member's] early willingness to resolve the matter by way of prehearing conference demonstrates as clearly as possible that [the Member] has been willing to accept responsibility for his misconduct.*

(121) It is evident throughout the history of the misconduct proceedings involving the Member that he has, in fact, never accepted responsibility for the misconduct that has been substantiated, other than the windshield damage. As is evident from the comments reported above made to counsellors at Edgewood, this appears to remain the case.

(122) Recognition of the fact of the Member's misconduct, and in particular, the assaults on the Complainant is a critical step in ensuring that future assaults on an intimate partner do not take place. As well, it is clear that the lack of such insight can seriously, if not fundamentally, diminish the ability of an police officer to appropriately deal with issues of spousal abuse or other forms of intimate partner violence.

(123) I am also not satisfied that there is evidence before me that the Member is willing to take steps to prevent recurrence of the misconduct in issue.

(124) I find that there is nothing before me to confirm, in practical terms, that the Member is willing to take steps to prevent reoccurrence of the misconduct arising in this case by addressing all of the issues that gave rise to his misconduct. Although the steps apparently taken **REDACTED**, that process has only begun.

(125) **REDACTED**. Nor has the Member made any other apparent moves to address his lack of awareness of the issues surrounding intimate partner violence over the four years that have elapsed since the assaults on the Complainant took place.

(126) That complete lack of attention to critical issues of training, education and lifestyle changes concerning violence in relationships is a very major outstanding concern. Specifically, it raises an unresolved concern as to the Member's ability to appropriately perform his duties, particularly in circumstances where intimate partner violence is an issue.

(127) These circumstances collectively raise a further significant aggravating factor with respect to the misconduct in issue.

(vi) The Degree to Which the Municipal Police Department's Policies, Standing Orders or Internal Procedures, or the Actions of the Member's Supervisor, Contributed to the Misconduct (s. 126(2)(f)

(128) It is unclear as to whether or not any relevant department policies, standing orders, internal procedures or actions of the Member's Supervisor might have contributed to the acts of misconduct which are the subject of these proceedings.

(vii) The Range of Disciplinary or Corrective Measures Taken in Similar Circumstances s. 126(2)(g)

(129) A review of the range of disciplinary or corrective measures taken in similar circumstances is important to ensure that some degree of parity is applied to members dealing with misconduct sanctions in similar circumstances.

(130) Counsel for the Commissioner submits that the weight of authority justifies the dismissal of the Member.

(131) The specific submissions of Counsel for the Commissioner on the relevant authorities are as follows:

Rendell v. Canada (Attorney General), 2001 FCT 710
This was an application for judicial review against the decision of the RCMP Commissioner who ordered the applicant to resign within 14 days or be dismissed. The Applicant has been convicted of assault against his common law wife and there were three counts of misconduct. In imposing discipline, the Commissioner stated:

"*The number one issue for me as the steward of meeting public and organizational expectations in a fair way is to simply ask whether citizens would expect their police officers to remain police officers after being convicted criminally of assault…The answer is unequivocally "no*"…"

In dismissing the judicial review, the Court held: "These decisions, together with the impugned decision of the Commissioner, leave no doubt that the RCMP has in place a zero tolerance for domestic violence committed by their own members. It is also clear that those who are found guilty of such conduct face the likelihood of dismissal unless there are sufficient mitigating factors to warrant a reduction on the severity of the sanction."

Shorey and Belleville Police Service, 2017 CanLII 53072 (ON CPC) The appellant was convicted of criminal harassment and breach of trust and he was found guilty of professional misconduct. The conduct arose after the breakup of a relationship and was against his ex-partner. The penalty of resignation within 7 days or dismissal was imposed. The member appealed. The hearing officer concluded that the conduct was "so egregious as to cause serious damage to the reputation of the Belleville Police Service. Police officers who commit such serious offences must be severely dealt with and, therefore, only one course of action is available to this Tribunal which has a duty to prevent further serious breaches of conduct."

In upholding the result, the Commission noted that while dismissal is "the most serious punishment" and "should be reserved for the most serious cases", the conduct was found to be deliberate, ongoing and egregious and distinct from "a single error of judgment".

The Commission also found that "some actions by a police officer can be so serious that they justify little weight being given to the officer's prospects for rehabilitation when determining penalty."

The New Brunswick Police Commission v. Smiley, 2017 NBCA 58 The officer was charged with assault and breach of an undertaking. The assault was against a common law partner. The assault charge was withdrawn and the breach charge was dismissed.

Professional disciplinary proceedings were commenced and the arbitrator in the first instance dismissed the officer. On judicial review, the decision was quashed. On further appeal, against the judicial review was allowed.

Furlong v. Chief of Police, 2013 CanLII 96216 (AB LERB) The misconduct was that the officer disparaged a fellow officer in front of others and, shoving and urinating on another officer. The officer was dismissed and the result was upheld. In upholding the dismissal the board stated: "Police officers are not ordinary employees and they are held in many ways to higher standards, with the public interest and public law being engaged in cases of police discipline."

On that basis, dismissal may be appropriate even for a first infraction.

Moffatt v. Edmonton (Police Service), 2019 ABLERB 29 The appellant pleaded guilty to harassment and providing a false statement.26 The officer was dismissed. In arriving at that result, the tribunal noted the absence of remorse, acceptance, responsibility or insight. On review, that result was upheld.

(132) In supplemental reply submissions, Counsel for the Commissioner addressed two specific cases arising under the *BC Police Act* where dismissal was imposed and upheld: Review of the Record (OPCC File No. 2013-8599, June 26, 2015, Cst. Gomes (the "Gomes Decision" and Review of the Record (OPCC File No. 2014-9552, May 10, 2017, Cst. Thandi (the "Thandi Decision").

(133) In the *Gomes* Decision, Adjudicator Filmer commented on the importance of public trust in the role of a police officer as follows:

> *"As stated by Adjudicator Pitfield in another case: The fact that an officer knowingly makes a false or misleading statement in a duty report or in the course of reporting to, or being interviewed by, a senior officer, must adversely affect one's assessment of the officer's integrity and honesty, and one's assessment of his or her suitability to be or remain a member of a police department.*
>
> *I agree with the DA that the allegations as proven against Constable Gomes could affect his ability to testify in a court of law. The judiciary and the Crown might well be reluctant to accept the evidence or to prosecute a case that relied on an officer who had been found guilty of 9 deceit. Trust in such an officer would have been seriously compromised. That core value of trust involves not only the courts, but the public, the senior officers, the brother/sister officers, and everyone else involved in the administration of justice in our society.*
>
> *In my opinion, Constable Gomes is no longer able to fill the role of a police officer. The allegations against him, which have been proven, are very serious and lasting in their impact. It is further my view that the only discipline appropriate for delicts #1 through #4 is dismissal. Having concluded my analysis of this matter, I find that I agree with the decision*

of the Discipline Authority and his conclusion that the misconduct was extremely serious, and that dismissal is the only appropriate discipline.

Applying the standard of correctness to the Discipline Authority's decision, I find that his decision was correct. I agree that the four delicts in this matter justify dismissal. I hereby order that Constable Filipe Gomes be dismissed from the Delta Police Department" :OPCC Supplemental Submission Authorities

(134) In the *Thandi* Decision, Adjudicator McKinnon found that the decisions taken by the Discipline Authority, both in finding serious misconduct and imposing an order for the dismissal of the officer concerned, were correct given the serious nature of the misconduct. Adjudicator McKinnon also found that Discipline Authority was correct that the officer concerned had ultimately admitted his misconduct, and that the *Human Rights Code* had no application to the facts of case. In the result, the Adjudicator confirmed the correctness of the decision to dismiss Officer Thandi.

(135) Counsel for the Member provided the specific submissions on this factor detailed above. Particular reliance was placed on Adjudicator Pendleton's recent decision in OPCC File No.2017-13521. The argument advanced is that even in cases of serious misconduct, and intimate partner abuse, dismissal is not the only option. Counsel confirms that Adjudicator Pendleton imposed a 15 day suspension for the single allegation of assault. Counsel's specific decision on this point is as follows:

> 31. The principle that correction and education must take precedence recognizes that people make mistakes, but individual mistakes do not necessarily define the person.
> 32. Dismissal is the opposite of correction, education and rehabilitation. It is bluntly and harshly punitive. It is founded on an assumption that an individual is incorrigible; that no amount of correction or education enable the member to return to work as a functioning member of his department. Hence, there is no point in attempting education or correction: the employee will simply be terminated. In a review on the record in OPCC File No. 2017-13521 retired Judge Pendleton was considering an argument by the Police Complaint Commissioner in a case that was arguable much more serious than the present case. The member had committed a "serious" assault on his wife; he placed a GPS recording device on her car, and when that was discovered he surreptitiously placed another GPS tracker; he sent his wife unwanted text messages; acting in his capacity as a police officer, he asked an employee of a bar to show him video recordings, claiming it was for an investigation, when he was really spying on his wife; and he accessed a police data base to obtain information about his wife. Retired Judge Pendleton said this about s. 126(3) of the *Police Act*: Section 126(3) requires that an adjudicator or discipline authority give "precedence to an approach that seeks to correct and educate….unless it is unworkable or would bring the administration of police discipline into disrepute." The Commissioner

submits that the member should be dismissed. In his decision, In The Matter Of The Public Hearing into the Complaint Against Constable #369 Adam Page, Adjudicator Pitfield said: "Dismissal is the most severe of the permitted sanctions. It neither corrects nor educates the member. It punishes by terminating the member's employment. Therefore, in the context of the abuse of authority by way of assault of a civilian, I must decide whether the imposition of a lesser sanction directed at correcting or educating the officer would undermine organizational effectiveness, or public confidence in the administration of police discipline. If not, then a lesser sanction should be considered provided the sanction that is selected does not undermine public confidence in the administration of police discipline. No mandatory minimum sanction is attached to any disciplinary default. Similarly, there is nothing that deems any particular assault to undermine organizational effectiveness or public confidence in the administration of police discipline. Rather, as so well stated by Adjudicator Clancy In the Matter of Constables Gemmel and Kojima, PH 2004-01, the question to be - 10 - considered is whether a reasonable man or woman aware of all the relevant circumstances would regard the omission to impose a sanction of dismissal in the circumstances of the assault would undermine public confidence in the administration of police discipline, and whether, from the Abbotsford Police Department's perspective the omission would undermine organizational effectiveness."

33. In that case discussed above, Judge Pendleton imposed a 15-day suspension for the "serious" assault on the member's wife. While noting that the misconduct committed by the member in that case was serious, Judge Pendleton also noted that it was an anomaly. He cited the member's previous clean record of discipline, and the support he received from his fellow officers. 34. The same points may be said in favour of Cst. Logan. He has a clean record of discipline, and he has had the support of his superiors.

> *28The British Columbia Police Act states the applicable purposes and principles, and it does so clearly and unambiguously. The purpose and principles for imposing disciplinary or corrective measure are stated in s. 126(3):*
>
> > *(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless*
> > *[i] it is unworkable or*
> > *[ii] would bring the administration of police discipline into disrepute.*
>
> *29. The philosophy of correction and education set out in s. 126 is particular to British Columbia. There is no equivalent of s. 126(3) in the equivalents of the Police Act in most other provinces. In Alberta, for example, the equivalent provision to s. 126 is headed, "Punishment". Police Service Regulation AR 356/90, s. 17). The word punishment is not found in the British Columbia Police Act. The Alberta legislation*

does not include a policy statement like that found in s. 126(3), giving precedence to correction and education.

30. Because the legislature of British Columbia has deliberately chosen follow a path separate from those taken in other provinces, it is especially incumbent on decision-makers applying the Police Act to give full effect to the two principles found in s. 126(3).

31. The principle that correction and education must take precedence recognizes that people make mistakes, but individual mistakes do not necessarily define the person.

32. Dismissal is the opposite of correction, education and rehabilitation. It is bluntly and harshly punitive. It is founded on an assumption that an individual is incorrigible; that no amount of correction or education enable the member to return to work as a functioning member of his department. Hence, there is no point in attempting education or correction: the employee will simply be terminated. In a review on the record in OPCC File No. 2017-13521 retired Judge Pendleton was considering an argument by the Police Complaint Commissioner in a case that was arguable much more serious than the present case. The member had committed a "serious" assault on his wife; he placed a GPS recording device on her car, and when that was discovered he surreptitiously placed another GPS tracker; he sent his wife unwanted text messages; acting in his capacity as a police officer, he asked an employee of a bar to show him video recordings, claiming it was for an investigation, when he was really spying on his wife; and he accessed a police data base to obtain information about his wife. Retired Judge Pendleton said this about s. 126(3) of the Police Act: Section 126(3) requires that an adjudicator or discipline authority give "precedence to an approach that seeks to correct and educate….unless it is unworkable or would bring the administration of police discipline into disrepute." The Commissioner submits that the member should be dismissed. In his decision, In The Matter Of The Public Hearing into the Complaint Against Constable #369 Adam Page, Adjudicator Pitfield said: "Dismissal is the most severe of the permitted sanctions. It neither corrects nor educates the member. It punishes by terminating the member's employment. Therefore, in the context of the abuse of authority by way of assault of a civilian, I must decide whether the imposition of a lesser sanction directed at correcting or educating the officer would undermine organizational effectiveness, or public confidence in the administration of police discipline. If not, then a lesser sanction should be considered provided the sanction that is selected does not undermine public confidence in the administration of police discipline. No mandatory minimum sanction is attached to any disciplinary default. Similarly, there is nothing that deems any particular assault to undermine organizational effectiveness or public confidence in the administration of police discipline. Rather, as so well stated by Adjudicator Clancy In the Matter of Constables Gemmel and Kojima, PH 2004-01, the question to be - 10 - considered is whether a reasonable man or woman aware of all the relevant circumstances would regard the omission to impose a sanction of dismissal in the circumstances of the assault would undermine public confidence in the administration of police discipline, and whether, from the Abbotsford Police Department's perspective the omission would undermine organizational effectiveness."

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34. The same points may be said in favour of Cst. Logan. He has a clean record of discipline, and he has had the support of his superiors.

35. The Police Complaint Commissioner has relied on a number of decisions, all of which are from provinces other than British Columbia. As noted earlier, the philosophical approach that correction and education take precedence over punishment is unique to British Columbia, and evidently reflects an approach that the legislature of British Columbia chose to take in distinction from the approaches taken from the legislatures of other provinces. The submissions of the Commissioner do not give appropriate weight either to the first principle that correction and education must precedence over punishment; or the second principle that measures other than those directed to education and correction may be considered only where correction and education are "unworkable", or giving precedence to correction and education would bring the administration of police discipline into disrepute.

36. The OPCC website contains summaries of, or full case decisions, from all Police Act cases in the province. Every decision that is cited on the OPCC website was approved by a Police Complaint Commissioner, or by a retired judge: those are the only two ways a case can reach conclusion. It is notable that the Police Complaint Commissioner has not been able to cite any cases from British Columbia, decided under the Police Act with s. 126(3), to support his position that dismissal is the only option in this case.

37. The most recent authority on point is the decision of retired Judge Pendleton. It is submitted that it supports the proposition that a lengthy suspension would not be unworkable, and would not bring the administration of justice into disrepute, for a single incident of violence in a relationship, for a police officer who has an otherwise creditable record as a police officer.

(136) I am satisfied that authorities advanced by Counsel for the Member are distinguishable in that:

(a) The Member's assaultive misconduct was serious and repeated;
(b) The assaultive misconduct which took place with an intimate partner has never been admitted by the Member; and
(c) The Member has not committed to any action which would address his assaultive behaviour towards women, rectify his lack of insight or diminish the prospects for his further misconduct.

(137) As Counsel for the Commissioner notes at paragraph 25 of his supplemental submissions:

> "in OPCC File No.2017-13521 the member accepted responsibility for his misconduct and was willing to take steps to prevent its recurrence. Further, it was found that there was a low risk for future misconduct."

(138) Such are clearly not the facts of this case, nor were the facts of the assault that took place in file 13521 similar to those suffered by the Complainant. Adjudicator Pendleton's decision is distinguishable, therefore, on several points.

(139) Considering all of the foregoing I conclude that, although a lengthy suspension may, in appropriate circumstances of serious misconduct, be the correct choice of disciplinary outcome, the facts must warrant that conclusion.

(140) I am also satisfied that although dismissal is a rare disciplinary sanction, it is properly reserved for cases evidencing serious misconduct that results in a breach of public confidence in the officer concerned.

(viii) Other Aggravating or Mitigating Factors

(141) I find that it is relevant to consider the following as other aggravating circumstances:

(a) The Member was not found to be a credible witness in describing the evolution of events, his involvement with the Complainant and his justification for acting as he did. The Member's testimony did little to enhance public confidence in policing; and
(b) The Complainant has suffered significantly as a result of the Member's misconduct and continues to suffer as a result of the abuse she endured.

IX Analysis

(142) As noted above, section 126(3) of the *Police Act* provides that if I consider that one or more disciplinary or corrective measures are necessary, I should prioritize an approach that seeks to correct and educate the Member, unless it is unworkable or would bring the administration of police discipline into disrepute.

(143) Having considered all of the foregoing, including the aggravating and mitigating factors noted above and the evidence adduced during the review process, I am satisfied that the focus of this decision must be to denounce the serious misconduct of the Member in no uncertain terms and serve as a deterrence to others. I find that the only method of accomplishing that result on the facts of this case is through disciplinary sanctions.

(144) I am also satisfied that an approach that seeks to correct or educate the Member would clearly bring the administration of police discipline into disrepute. It would do so because such an approach would not provide the appropriate denunciation of the Member's actions or address the very high likelihood of a loss of public trust in the Member, and the administration of police discipline.

(145) Furthermore, in terms of possible correction or education, it is noteworthy that almost four years have elapsed since the misconduct took place and there is no evidence at all that the Member has taken the initiative to address any further training or education in the areas of assaultive behaviour or intimate partner violence. Given the Member's enduring denial of his assaultive misconduct and complete lack of remorse, I am satisfied that correction or education would have little benefit.

(146) In the circumstances of this case, therefore, prospects for member rehabilitation must be a secondary objective.

(147) In terms of sanctions related to the Substantiated Misconduct
I find that a demotion would prove to be an inadequate sanction for the Member's misconduct as the issue of continued trust in the values and actions of the Member would remain.

(148) The same issue arises when considering a suspension of any length. At the end of both such options, the Member would remain an unrepentant denier of the serious intimate partner violence that was suffered by the Complainant. His role as a trusted peace officer would be unquestionably and irreparably compromised in such circumstances.

(149) It is my finding that a reasonable person, aware of all of the circumstances of the Member's misconduct, and all other relevant factors, would conclude that a failure to dismiss the Member would unquestionably undermine public confidence in the administration of police discipline.

(150) I find that there is an unequivocal public expectation that police officers will not engage in intimate partner violence in any form if public trust in policing is to be maintained. In that regard, I agree with the submission of Counsel for the Commissioner that "*public trust in policing rests on the confidence in knowing that an officer will exercise his/her authority within the bounds of the law*" : OPCC submissions para 29.

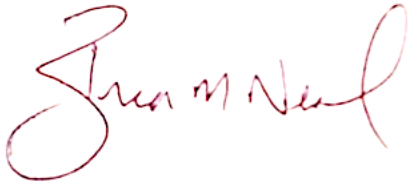
(151) I would add to that an observation that public expectations with respect to the lawful conduct of police officers extends not only to on duty actions, but conduct off duty as well. Anything less would clearly reduce public trust in policing.

(152) Considering all of the foregoing, I have concluded that the only correct disciplinary sanction that adequately addresses the facts of this case is the dismissal of the Member. I come to that conclusion acknowledging that:

(a) The dismissal of the Member from service as a police officer will unquestionably have serious and enduring consequences for the him and his family;
(b) The Substantiated Misconduct of the Member, and in particular the assaults on the Complainant, were very serious and completely inconsistent with reasonable public expectations of a police officer, on or off duty;
(c) The Member has consistently denied responsibility for the assaults on the Complainant and demonstrated no remorse in relation to the same;
(d) The Member has shown no insight into or understanding of the issues arising from Intimate partner violence;
(e) There is a very real likelihood of further misconduct on the part of the Member; and
(f) Any reasonable person considering the circumstances relevant to this Review, would conclude that the Member's substantiated misconduct, and attitudes to intimate partner violence, have resulted in a fundamental loss of trust and confidence in the Member's ability to serve as a police officer in accordance with the law.

X Conclusion and Orders

(153) Given the foregoing aggravating and mitigating circumstances, I have determined, pursuant to sections 141(10) and 126(1) (a) of the *Police Act*, that the Member must be dismissed in relation to both allegations of Substantiated Misconduct.



Brian M. Neal Q.C. (rt)
Retired Judge
Victoria, B.C.