

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

and

IN THE MATTER OF A DISCIPLINE HEARING UNDER SECTION 124

and

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST  
CST. [REDACTED] and CST. [REDACTED] OF THE VICTORIA POLICE  
DEPARTMENT

DISCIPLINE AUTHORITY'S DECISION ON DISCIPLINE OR CORRECTIVE  
MEASURES

(Supplement to Form 4)

TO: Constable [REDACTED]

AND TO: Mike Shirreff, Counsel for Constable [REDACTED]

AND TO: Clayton Pecknold, Police Complaint Commissioner

### **Introduction**

1. On March 19, 2021, I delivered my Findings and Reasons under section 125(1)(b) of the *Police Act*. I found that Constable [REDACTED] had committed the misconduct offence of discourtesy pursuant to section 77(3)(g) of the *Police Act* in using profane language in the course of a ticketing event. I must now propose appropriate disciplinary or corrective measures.

### **The Misconduct**

2. Between 8 and 9 PM on [REDACTED], Constable [REDACTED] and two other officers stopped the Complainants ([REDACTED], [REDACTED] and [REDACTED] collectively the "Complainants") and their friend [REDACTED] for carrying open alcohol while the group was walking down a street in Victoria, B.C. In the course of stopping the Complainants and ticketing the Complainant Mr. [REDACTED] Constable [REDACTED] used aggressive and profane language that was uncalled for

and had the effect of accelerating a routine stop for a minor matter into a much more significant issue that resulted in official complaints and allegations of racial profiling.

3. The profane language was described in paragraphs 99-117 of the decision.

4. At paragraphs 120-122 of the decision I had this to say:

120. The test is whether the statements would be perceived as discourteous by reasonable or right-thinking persons within the community. Put another way would an objective, reasonable individual in the community consider the statements as being uncivil?"

121. I have no hesitation in concluding that the statements taken together amount to discourtesy. Constable [REDACTED] use of profanity accelerated what should have been a routine stop into a significant issue. For reasons that are not totally clear on the evidence Constable [REDACTED] not only used profanity but became agitated and aggressive. I am satisfied that had Constable [REDACTED] acted professionally this unfortunate incident could have been entirely avoided.

122. The oft quoted case of *Rex v Zwicker* [1937] NSJ is worth repeating:

15. The well known saying from Gilbert and Sullivan that "a policeman's lot is not a happy one" is true at times, but it is also true with regard to all public officials. They must expect more or less so-called abuse. It is an incident of democratic government and free speech; and they should bear it, if not in good humour, at least with reasonable tolerance and that tact which is a very necessary part of the equipment of a servant of the public. In this country a policeman is a peace officer, and his duty is not only to the public generally but to every individual citizen, and to protect that citizen, and to protect him, as far as possible, even against his own weakness and not to hail him before the magistrate for every foolish thing he does.

5. The evidence referred to above satisfied me that Constable [REDACTED] had been discourteous towards a member of the public in the performance of his duties. The discipline proceeding was adjourned to April 9, 2021 for written submissions from counsel as to the appropriate discipline or corrective measures.

### **Position of Counsel**

6. In light of the aggravating and mitigating circumstances that must be considered under section 126(2) of the *Police Act*, Constable [REDACTED] submits that the just and appropriate corrective measures in this case are a verbal reprimand and completion of the Police Ethics and Accountability course provided by the Canadian Police Knowledge Network.

## **Section 126**

7. Section 126 of the *Police Act* governs discipline and corrective measures that the discipline authority must propose for an allegation of misconduct found to be proven. It states:
  - (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 section 113 [complainant's right to make submissions], the discipline authority must, subject to this section and sections 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.

### **Section 126(3) Considerations**

#### **Aggravating and Mitigating Circumstances**

##### **a. The seriousness of the misconduct**

8. Discourtesy is defined at section 77(3)(g) of the *Police Act* as “failing to behave with courtesy due in the circumstances”. After carefully considering the evidence I found that Constable [REDACTED] made the decision to stop the Complainants after seeing Mr. [REDACTED] with the beer. Constable [REDACTED] was opposed to the stop. I found that the stop was not racially motivated as had been alleged by the complainants. However, during his subsequent interaction with the Complainants, Constable [REDACTED] appeared to lose his composure. I concluded his interaction with the Complainants which included the repeated use of profanity and aggressive body language, amounted to Discourtesy.
9. Any form of misconduct under the *Police Act* is serious. In this case it involves the interaction between a police officer and the public. For any number of reasons people today are more suspicious and, indeed, fearful of police. The ability of a police officer to interact professionally with the general public is a crucial skill set.
10. However, when viewed in the context of all of the offences set out in section 77(3) of the *Police Act* the offence of Discourtesy is clearly at the less serious end of the spectrum in terms of the necessary disciplinary or corrective measures appropriate.

**b. The member's record of employment as a member, including, without limitation his or her service record of discipline, if any, and any other current record concerning past misconduct**

11. Constable [REDACTED] has been a police officer with the Victoria Police Department since [REDACTED]. He is currently [REDACTED] years old, married, and has four young children. After graduating high school, Constable [REDACTED] attended the [REDACTED] [REDACTED] and [REDACTED], and earned a Bachelor [REDACTED] and an honour's Bachelor [REDACTED]. He was a member of the [REDACTED] and then a [REDACTED] and [REDACTED] prior to becoming a police officer. Constable [REDACTED] started in general patrol, worked in the community services division and was a school liaison officer from [REDACTED] to [REDACTED]. He worked in patrol in early [REDACTED] and then transferred back to the community services division in [REDACTED].
12. In written submissions counsel for Constable [REDACTED] provided excerpts from performance appraisals. They were overwhelmingly positive and consistently noted that he met or exceeded expectations in all categories assessed. In addition to excellent performance appraisals counsel provided a summary of Constable [REDACTED] participation in volunteer activities in the community as well as a synopsis of the various awards he has won for service, leadership and courage. Having reviewed the material, I have no hesitation in concluding the Constable [REDACTED] has been a very positive force within the community of Victoria and appears to have contributed to the betterment of the lives of his fellow citizens.

**c. The impact of proposed disciplinary or corrective measures on the member and on her or his family and career**

13. I had an opportunity to observe Constable [REDACTED] when he testified. It is clear that he enjoys being a police officer, values his career with the Victoria Police Department and takes pride in his service to the community. Any substantiated allegation of misconduct is serious, particularly in the context of an otherwise stellar career since it may well delay a promotion.
14. I do not believe that any of the proposed disciplinary or corrective measures I have in mind would impact Constable [REDACTED] family.

**d. The likelihood of future misconduct by the member**

15. Constable [REDACTED] does not have any history of misconduct, and he is consistently described by superiors as a hard worker with a good attitude and excellent interpersonal skills. Constable [REDACTED] cares a great deal about his reputation as a police officer. The disciplinary process is an ordeal in itself. With no past record of misconduct and having experienced the discipline process, the likelihood of Constable [REDACTED] inappropriately conducting himself in the future is small. He has had an opportunity to see this unfortunate incident from a different perspective and

is now aware of the impact it had on the Complainants. I believe he has learned an important lesson.

**e. Whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence**

16. In submissions counsel for Constable [REDACTED] had this to say:

*Throughout this matter, Cst. [REDACTED] has been forthright and made numerous admissions with respect to the allegations of the Complainants. While he did not agree with every allegation made by the Complainants, as set out in the Findings Decision, Cst. [REDACTED] had no issue admitting most of the key aspects of this matter.*

17. Counsel also pointed out that Constable [REDACTED] has learned from the experience and has expressed his willingness to take any courses that are necessary to better himself as an officer and which would ensure that no similar conduct occurs going forward.

**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**

18. I have not been presented with the Victoria Police Department's policies, standing orders or internal procedures and therefore I am not in a position to indicate whether they contributed to the misconduct. However, I note that both the investigating officer and the original discipline authority concluded that the conduct in question did not amount to misconduct under the *Police Act*.

19. I did find some of the comments in the original investigative report, as well as the decision of the original Discipline Authority, to the effect that policing allows for more forceful language in certain situations, somewhat surprising given the fact pattern that existed in this case. What should have been a routine stop accelerated out of control and none of the officers involved utilized any of the de-escalation techniques that are ordinarily a standard part of police training. In fact, the senior officers condoned the use of profanity and aggression as a tactic to control the situation. This was a summer's evening on the long weekend. Although one of the individuals had consumed a number of drinks the others were not impaired. It was 8:30 at night and they were walking home from a themed party. They were not loud or boisterous. In all apparent respects they were ordinary citizens.

20. Unfortunately, not being privy to the training Victoria Police Department officers receive I am unable to say whether or not standard policy would have included the use of profanity and aggression in this situation.

21. Police conduct is under scrutiny like never before. Policing is demanding and often thankless. Professionalism in a police officer's interaction with the public is crucial.

**g. The range of disciplinary or corrective measures taken in similar circumstances**

22. Counsel for Constable [REDACTED] provided a synopsis of some of the cases where Discourtesy was established. In the cases cited a verbal or written reprimand was the discipline deemed appropriate.

**h. Other aggravating or mitigating factors**

23. I believe all of the aggravating and mitigating factors have been mentioned.

**Conclusion**

24. Section 126(3) requires me to 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.
25. After considering the evidence, the material filed and the options available I have concluded that the most appropriate approach, bearing in mind section 126(3), is a verbal reprimand under 126(1)(j). Constable [REDACTED] has offered to attend and complete the "Police Ethics and Accountability" course provided by the Canadian Police Knowledge Network, pursuant to section 126(1)(h) of the *Police Act*. Although he has taken that course in [REDACTED] in my view it would be useful for him to take it again. If the Canadian Police Knowledge Network has a course that deals with de-escalation techniques I would strongly encourage Constable [REDACTED] to take that as well.
26. Constable [REDACTED] has an enviable record with the Victoria Police Department. His performance reviews are excellent. He has worked hard to be a contributing member to his community and the letters of commendation emphasize his enthusiasm for his job, his leadership ability and his professionalism in dealing with the public. I consider the unfortunate events of [REDACTED] a one-off in the context of his career with the Victoria Police Department. In concluding that a verbal reprimand is appropriate I have taken into consideration that he has a clean record and has exhibited an ability to appropriately deal with the public in a variety of challenging circumstances. He has also accepted responsibility for what occurred [REDACTED].
27. It is unfortunate that the events of [REDACTED] resulted in the invocation of the disciplinary process under the *Police Act*. Initially at least, some of the Complainants expressed a desire to work through the incident by sitting down with

the officers. It was an ideal situation for mediation where an exchange of perspectives may well have resolved the matter informally.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small dot.

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Signature of discipline authority  
Judge John (Jim) James Threlfall (rt.)

Date: April 15, 2021