

May 29, 2020

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996 C. 367
AND
IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST
CONSTABLE [REDACTED]

NOTICE OF ADJUDICATOR'S DECISION

TO: Constable [REDACTED] Member
c/o West Vancouver Police Department

AND TO: Sergeant [REDACTED] Investigating officer
c/o West Vancouver Police Department
Professional Standards Section

AND TO: Mr. Clayton Pecknold Police Complaint Commissioner

Introduction

1. This matter arises from information provided by the West Vancouver Police department to the Police Complaint Commissioner in May 2018. The Commissioner was advised that on May 16, 2018 Constable [REDACTED], a member of the West Vancouver Police Department, while off duty, called the Surrey RCMP to report a theft from his personal vehicle. Personal property belonging to the member as well as a high capacity ammunition magazine, an access card to the [REDACTED] RCMP detachment office

and his police notebook were taken by the thieves who fled the scene in a vehicle. Later that day Constable [REDACTED] called the Surrey RCMP to advise he had a suspect in his custody. RCMP members attended and arrested the suspect. Some of the stolen personal property was recovered. The magazine, access card and police notebook were not.

2. On May 28, 2018, the Commissioner ordered an investigation of the conduct of Constable [REDACTED] pursuant to section 93(1)(a) and (b)(i) of the Police Act after concluding that the conduct of the member would, if substantiated, constitute misconduct pursuant to section 77(3)(h) of the Police Act (discreditable conduct) and section 77(3)(m)(ii) of the Police Act (neglect of duty). Sergeant [REDACTED] of the West Vancouver Police Department was assigned to conduct the investigation.
3. On September 13, 2018, Sergeant [REDACTED] submitted a request for a suspension of the investigation because the suspected thief, [REDACTED] had been criminally charged and those charges were before the Court. On September 21, 2018, the Office of the Police Complaint Commissioner ordered the Police Act investigation be suspended pursuant to section 179(4).
4. On January 22, 2020 the suspension was lifted. Mr. [REDACTED] had entered a guilty plea and was sentenced to serve a Conditional Sentence Order in the community. Sergeant [REDACTED], who had replaced Sergeant [REDACTED] was ordered to complete the investigation.
5. Sergeant [REDACTED] considered the evidence and delivered her Final Investigation Report dated March 30, 2020 to the Discipline Authority, Inspector [REDACTED] of the West Vancouver Police Department. She concluded

that the evidence did not prove the alleged misconduct against Constable [REDACTED]. She recommended the allegations be deemed unsubstantiated.

6. On April 17, 2020, Inspector [REDACTED] issued his decision pursuant to section 112 of the Police Act. Inspector [REDACTED] considered two allegations of misconduct and determined that the evidence in the Final Investigation Report did not appear to substantiate the allegations. The allegations considered by Inspector [REDACTED] were:
 1. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, for inserting himself into an RCMP investigation when he should not have.
 2. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*, for leaving police property inside an insecure vehicle.
7. The Police Complaint Commissioner reviewed the Discipline Authority's decision and considered that there was a reasonable basis to believe that the decision was incorrect.
8. On May 14, 2020 the Police Complaint Commissioner appointed me to review the investigating officer's report, the evidence and the records pursuant to section 117 of the Police Act.

Section 117

9. The statutory authority governing this review is set out in Section 117 of the Police Act. If, on review of a discipline authority's decision under section 112(4) or 116(4) that conduct of a member or former member does not constitute misconduct, the Police Complaint Commissioner considers that

there is a reasonable basis to believe that the decision is incorrect, the Police Complaint Commissioner may appoint a retired judge recommended under subsection (4) of this section to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
 - (b) make her or his own decision on the matter;
 - (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.
- (6) The Police Complaint Commissioner must provide the appointed retired judge with copies of all reports under sections 98, 115 and 132 that may have been filed with the Police Complaint Commissioner before the appointment.
- (7) Within 10 business days after receiving the reports under subsection (6), the retired judge appointed must conduct the review described in subsection (1)(a) and notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.
- (8) Notification under subsection (7) must include:
 - (a) a description of the complaint, if any, and any conduct of concern,
 - (b) a statement of a complainant's right to make submissions under section 113,
 - (c) a list or description of each allegation of misconduct considered by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and requires the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120;

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officer's report and the evidence and records referenced in them, the appointed retired judge considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

10. A review of the Section 117 case law and the case cited as 2016 BCSC 1970 defines my role as the adjudicator. I must review the material delivered under subsection 117(6) and determine whether or not the conduct of the

member appears to constitute misconduct. The law is clear that, because the adjudicator may become the discipline authority in relation to discipline proceedings, my job is not to reach conclusions about the conduct of the member; rather, it is to assess only whether it appears to constitute misconduct.

11. The review is a paper-based process of the record provided by the Commissioner. There are no witnesses or submissions. Section 117(1)(b) directs the adjudicator to make “her or his own decision on the matter.”

Reports and Material Considered

12. Pursuant to sec. 117 (6) the Commissioner provided the following materials for my review.
 - (a) Final Investigation Report of Sergeant [REDACTED] and attachments described as: OPCC orders and notices, progress reports, members’ statements, supporting RCMP documents, statements of Mr. [REDACTED] and legislation/police policy.
 - (b) Additionally, I have considered the Notice of Appointment of Retired Judge dated May 14, 2020, and the relevant case law and statutory authority.

Section 117(8)(a) Description of the Conduct of Concern

13. The conduct of concern relating to Constable [REDACTED] arose out of his involvement in the apprehension of [REDACTED] who stole items from the member’s vehicle on May 16, 2018. On that day Constable [REDACTED], who is a member of the West Vancouver Police Department, was off duty and

driving his vehicle from his home in Surrey to work. He stopped his vehicle in Surrey at the side of the road, left it unlocked and went into a bushy area to relieve himself. As he returned to his car he saw two men getting out of his vehicle and fleeing in another vehicle. Constable [REDACTED] got into his car and noticed it had been rummaged through and some of his property had been taken. He pursued the suspect vehicle, managed to get the license plate number but lost sight of the thieves. He called 911 and reported a theft to the RCMP Surrey detachment.

14. Constable [REDACTED] later that morning located the address of the registered owner of the vehicle driven by the suspects. He went to the residence and was told by the registered owner that she had lent the vehicle to her friend [REDACTED]. Constable [REDACTED] then spoke to Mr. [REDACTED] on the telephone and arranged to meet Mr. [REDACTED] who agreed to return the member's stolen property. The two met at a nearby restaurant and Mr. [REDACTED] returned some of the stolen property. Constable [REDACTED] then took Mr. [REDACTED] into his custody. He called the Surrey RCMP who attended and arrested Mr. [REDACTED]. The alleged conduct of concern as described by the Commissioner is "whether Constable [REDACTED] used information he obtained from the Surrey RCMP to locate the registered owner and, ultimately, arrest the suspect in a criminal matter in which he was the victim, that he did so while the RCMP were actively investigating the incident, that his actions potentially jeopardized the criminal investigation and that leaving police property and sensitive police information in his unlocked vehicle posed a significant risk to the public."

Section 117(8)(c) - Allegations of Misconduct Considered

15. Having reviewed the evidence referenced in the Final Investigation Report, I identify the following allegations (the allegations considered by Sergeant

██████ and an additional allegation that arises from my consideration of the reports, evidence and materials) of misconduct against Constable ██████ that could appear to be substantiated:

1. Discreditable conduct, which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department contrary to section 77(3)(a)(h) of the Police Act.
 2. Neglect of duty, which is neglecting without good and sufficient cause to promptly and diligently do anything that is one's duty as a member to do contrary to section 77 (3)(a)(m) of the Police Act.
 3. Corrupt practice, which is using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member contrary to section 77 (3)(a)(c)(iii) of the Police Act.
16. I am mindful of the limitation to the definitions of misconduct found in Section 77(4):

Section 77(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

Section 117(8)(d)(i) Whether the Evidence Appears Sufficient to Substantiate the Allegation

17. Sergeant [REDACTED] reviewed statements from Constable [REDACTED] Corporal [REDACTED] and Constable [REDACTED] who are members of the Surrey RCMP. She also considered statements of [REDACTED] [REDACTED]. On March 4, 2020 Sergeant [REDACTED] interviewed Constable [REDACTED] prior to submitting the Final Investigation Report.

18. Upon a review of the Record I am satisfied the following circumstances are not in dispute:
 - a) On May 16, 2018 at 06:30 Constable [REDACTED] telephoned 911 to report a theft from his vehicle.

 - b) Constable [REDACTED], an off duty member of the West Vancouver Police Department, told the dispatcher he was driving his vehicle in Surrey and had stopped at the roadside to relieve himself. When he returned to his vehicle he saw two people leaving the scene in a green Kia, BC license plate [REDACTED]. He noticed some of his possessions had been taken and he pursued the suspects but lost sight of the car.

 - c) At 06:46 the file was dispatched to Surrey RCMP Constable [REDACTED] who commenced a patrol looking for the Kia.

 - d) Shortly after 07:00 Constable [REDACTED] encountered Surrey RCMP Constable [REDACTED] who was involved at that time in an unrelated investigation. Constable [REDACTED] approached Constable [REDACTED] identified himself as an off duty West Vancouver officer and told [REDACTED] about the theft. The member told Constable [REDACTED] that he realized more of his possessions were missing. Constable [REDACTED] used his police

computer to access information regarding the file. The information that came up, which both officers were able to see on the screen, included the identity of the registered owner of the Kia vehicle. Constable [REDACTED] then left in his vehicle.

- e) Constable [REDACTED] and Constable [REDACTED] agreed to meet at a Surrey RCMP district office and at 08:02 Constable [REDACTED] interviewed Constable [REDACTED]. Surrey RCMP Corporal [REDACTED] was aware of the earlier 911 call from [REDACTED] and she instructed Constable [REDACTED] to find out whether any police property had been stolen. Constable [REDACTED] told Constable [REDACTED] that in addition to the personal property taken, he was missing a Glock high capacity pistol magazine containing several rounds of ammunition, an access card to the [REDACTED] RCMP detachment office and his police notebook. Constable [REDACTED] did not say anything to [REDACTED] about going to the home of the registered owner of the Kia.
- f) After leaving the interview Constable [REDACTED] drove to the Surrey residence of [REDACTED] the registered owner of the Kia. Constable [REDACTED] had seen the address of the registered owner while looking at Constable [REDACTED]'s computer. He did not tell Constable [REDACTED] he would go to the owner's house. Constable [REDACTED] told Ms. [REDACTED] about the theft from his vehicle, identified himself as a police officer, and said that he wanted to get his stolen property returned. Ms. [REDACTED] said she had lent her vehicle to her friend [REDACTED]. She then telephoned Mr. [REDACTED] who agreed to meet with Constable [REDACTED] and to return the stolen property.
- g) At 09:04 Constable [REDACTED] called 911 to report he had Mr. [REDACTED] in his custody. Corporal [REDACTED] drove to the location and located

Constable [REDACTED] and Mr. [REDACTED]. She arrested Mr. [REDACTED]. Constable [REDACTED] recovered some of his personal property, however, the magazine, ammunition and his notebook were never recovered.

- h) At 13:21 Constable [REDACTED] interviewed Michael [REDACTED] and recorded the interview during which Mr. [REDACTED] admitted stealing Constable [REDACTED]'s property.
- i) [REDACTED] was released on a Promise to Appear. He pled guilty to theft and was sentenced on January 2, 2020 to a one year Conditional Sentence.

19. Constable [REDACTED] in his March 4, 2020 interview was asked by Sergeant [REDACTED] to explain how he got the address of the registered owner of the Kia vehicle and why he went there. He said:

Cst [REDACTED]: Uh, I realized that when I reported my uh, item, specifically my car initially that, I, I may have not indicated that I was also missing a backpack uh, an Oakley backpack to be specific, so I walked up to uh, Constable [REDACTED]'s police vehicle and advised that I've been a victim of a crime that occurred in this general area uh, and I requested that he MDT the member just to let them know that this item was also missing uh, he wasn't aware of the file uh, that officer ran the work queue uh, found the file that was associated. Ah, he opened the file and started scrolling through it to determine who the lead investigator was and in the process of him scrolling through the file I noted certain notes on the file including the suspect vehicle and where the RO resided.

Sgt. [REDACTED]: Were you aware at all through the course of the

investigation that the Mounties had attended the RO's address?

Cst. [REDACTED]: I had no idea.

Sgt. [REDACTED]: And uh...when did you decide that you were going to go to the RO's address?

Cst. [REDACTED]: Uh, I think it was after I gave my statement at the Surrey headquarters 'cause it wasn't very far away from it and uh, my initial idea was to sit at the residence just to see if the suspect vehicle had come home yet, 'cause if it had been in the driveway, my intention was to contact the Surrey RCMP so they can do the follow-up 'cause I know they're a busy police department and they didn't have the resource to have somebody sit on the house all day long waiting to...return...miniscule items to somebody else.

Later he said:

Sgt. [REDACTED]: Okay, um, why did you decide to go to the RO's res and not like, what made you assume you needed to do that? Was there a reason why you didn't leave that to the RCMP to do given that, that would seem like the appropriate thing for the RCMP to do?

Cst. [REDACTED]: Ordinarily I would, but given I know Surrey's overwhelmed with workload, with low employee numbers, I knew they wouldn't have the resources to spare to sit there all day and I was willing to sit there all day until the car came home if necessary.

Sgt. [REDACTED]: Okay.

Cst. [REDACTED]: So, it's just a staffing issue and yeah, resources.

20. In the same interview Constable [REDACTED] described his meeting with Ms. [REDACTED] and [REDACTED]. He said:

Cst. [REDACTED]: So I knocked on the door, a female answered, so initially I just said, I asked who...the owner of the green Kia was who lived there. She advised it was her car uh, and she asked why. I said well, 'cause whoever's driving your car stole out of my car. I'd like to get my stuff back and she kind of said oh okay, and then uh, she's like, well my friend has them, like, well can you get in touch with the friend, like, I need to get to work. Can I, I want to get my stuff back. She said I can give him a call and now she was giving him a call, I think, kind of to make conversation. She's like, oh so you're heading to work, like, what do you do for work? And I'm like, I'm a police officer and she's like, so the next words out of her mouth to the male who answered the phone were... She's like, you robbed a cop. You fucking idiot, and then offered to have me talk to him on the phone.

Sgt. [REDACTED]: Okay, and then tell me about that conversation um, with him on the phone.

Cst. [REDACTED]: So I think the female said this guy's name is [REDACTED], so I said hey, [REDACTED], you have my stuff and I'd like to get it back. I'm at your house. Can you meet me here? And he said I'm not near there right now, but I can meet you in the Guildford area. I asked him to pick a, a spot. He told me the Dairy Queen in Guildford which I knew it was up on 152nd, so I said that's fine um, I'll drive there if not...and meet you. And then at that point we disconnected and I actually contacted Constable [REDACTED] and left him a voicemail on his desk

line 'cause that's the number he gave me to know what's going on so I didn't have to go meet suspects by myself, and then I never got a call back him. I never heard from him again, so I parked at the Dairy Queen. A gentleman walked up to my car. I got out of my car. I was asked...the gentleman if he was [REDACTED]. He said yes. [REDACTED] proceeded...to give me back a stack of my ID, so not my wallet but like my, my [REDACTED], my driver's license, that sort of thing. And then he was pretty apologetic and I said that's great. I appreciate that but where's the rest of my stuff. He indicated he had thrown some stuff out the windows and then also said some of my stuff was in the dumpster behind the Save on Foods, so then he proceeded to walk me to the dumpster behind Save on Foods uh, and then it was like a locked compounded gated, gar-, garbage area and then he actually climbed in and started throwing out my stuff, which...was, included my back pant, my Gatorade, like a CD case um, and then my backpack was full with a bunch of stolen mail from...around the Fraser Valley area.

21. Sergeant [REDACTED] asked Constable [REDACTED] if there was a reason why he felt it was necessary to investigate the theft. He said:

Sgt. [REDACTED]: Um, is there a reason that you inserted yourself or basically put yourself on duty at one point during this investigation?

Cst. [REDACTED]: No...?

Sgt. [REDACTED]: So, for, for example, the reason I ask is um, I would consider that the moment that you showed up at the RO's address that you've put yourself on duty, especially when you identify yourself as a police officer um, and I'm wondering if you can elaborate on why

you felt that, that was necessary.

Cst. [REDACTED]: Actually I don't know if I would have brought it up. Like I said, that was a question that you know, the owner proposed to me. I did go there using my title as a chance to benefit myself. She asked what I did for work and I responded honestly um, I actually didn't consider myself a police officer at the time. I just exercising my kind of chartered rights to protect myself and try to get it back and like I said, I know part of that is if you do an off-duty arrest or civilian arrest that I have to produce someone to an officer forthwith is...which is what I did.

22. Constable [REDACTED] interviewed [REDACTED] on May 16, 2018. Mr. [REDACTED] told the officer that Constable [REDACTED] said he would not get the police involved if Mr. [REDACTED] returned the stolen property. Mr. [REDACTED] said:

M- start over and tell me what happen

W - I don't remember

M - what did the guy tell you, first thing

W - [REDACTED] was on the phone, hand you over to the guy at the door. He said all I want is my stuff back. Meet me and give me my stuff back and I'll squash it. Meant he would not get the police involved.

M - Did he say who he was

W - I think he said he was an off duty police officer. Either [REDACTED] or he told me. I was going to give him his stuff back and he would squash it. Not charge me. I'm sure [REDACTED] heard it because she was there.

M - did you believe him

W - yes. Because he sounded sincere.

23. In the Final Investigation Report, Sergeant ██████ carefully analyzed two issues. Firstly, whether the member's conduct in relation to the theft of items from his vehicle constituted discreditable conduct. Secondly, whether the member neglected his duty without good and sufficient cause, to properly or diligently secure his police notebook and the pistol magazine and ammunition. She assessed four key decisions of Constable ██████ and concluded that none of them would cause the public concern nor bring discredit to the West Vancouver Police Department. Sergeant ██████ also concluded that Constable ██████ committed no misconduct when he had his police notebook and the magazine and ammunition in his car.
24. Section 117(1)(a) and (b) of the Police Act requires me to review Sergeant ██████'s report and the evidence and records and then make my own decision on the matter. I agree with the comments of the Adjudicator Baird Ellan in OPCC 2016-11867 where she said:
- “While my task is not to review his decision, rather to consider the issues and reach my own conclusion, I find it instructive consider the matter from the perspective of a trained officer, particularly in assessing the reasonableness of the member's response from a policing perspective. In doing so I nonetheless bear in mind that the test has an objective component”
25. Having considered the Final Investigation Report and the evidence and records, I am satisfied that the conduct of Constable ██████ does not constitute misconduct pursuant to section 77(3)(a)(c)(iii). Conduct that has been found, in other OPCC decisions, to be a corrupt practice or discreditable conduct include where an officer identifies herself or himself as a police officer to another member who is investigating that officer or an immediate family member and the officer is attempting to influence the

course of the investigation to produce a favourable outcome or where an officer uses her or his position for personal gain. In my opinion, that is not what Constable [REDACTED] was doing on May 16, 2018. Constable [REDACTED] attended Ms. [REDACTED]'s residence and told her he was a police officer. Although he told Sergeant [REDACTED] he was using his title as a chance to benefit himself, I am satisfied he was simply attempting to recover his belongings. He was not the subject of a police investigation; rather he was a victim of a crime trying to get his property back. When he left Ms. [REDACTED]'s residence he telephoned Constable [REDACTED] and left a message that he was going to meet Mr. [REDACTED].

[REDACTED] At this point in time, he appears to be cooperating with the RCMP investigation, not trying to avoid it. The evidence does not support the conclusion that he was engaged in a corrupt practice. Nor does the evidence appear to substantiate the allegation that he offered to "squash" the charges against [REDACTED]. Sergeant [REDACTED] considered this in her Final Investigation Report at page 17. She determined that Mr. [REDACTED] was not a credible witness and I agree with her analysis of the evidence and her conclusion that Constable [REDACTED] did not make any promises or inducements to Mr. [REDACTED]. The issue to be determined at this stage is whether the evidence appears sufficient to substantiate the allegation. Based on the materials and the evidence, I find the evidence does not appear to substantiate that Constable [REDACTED] committed a corrupt practice.

26. Having considered the Final Investigation Report and the evidence and records, I am satisfied it appears there are questions regarding whether Constable [REDACTED]'s conduct in investigating the theft from his vehicle would be likely to bring discredit to the West Vancouver Police Department. Sergeant [REDACTED] concluded that Constable [REDACTED]'s conduct in attending Ms. [REDACTED]'s residence and going by himself to meet Mr. [REDACTED] showed poor judgment. She said it was not tactically wise because of officer safety concerns. Fortunately, no one was injured. Sergeant [REDACTED] found that

Constable [REDACTED] inserted himself into the Surrey RCMP investigation and by doing so caused the Surrey RCMP to have to do extra work to have the charges against Mr. [REDACTED] approved. However, she was satisfied his actions did not impact or end the prosecution. Sergeant [REDACTED] concluded that if Constable [REDACTED] had not gotten involved it was reasonable to deduce that Mr. [REDACTED] may not have been charged and convicted and the stolen property may not have been recovered. The fact that no one was injured and the prosecution was not impacted, does not, in my opinion, resolve the issue of whether Constable [REDACTED]'s conduct would bring discredit to the West Vancouver Police Department. The evidence is that Constable [REDACTED] went to the registered owners house without backup, without any of his police tools and without any police department knowing where he was. He would not have known who may have been in the residence or whether he was putting himself or others in danger. Similarly, when he went to meet [REDACTED] he did so without backup and his tools. It was, as Sergeant [REDACTED] said, not tactically wise. He may have put himself and possibly members of the public and other police officers who may have had to respond, at risk. Sergeant [REDACTED] said that the public would not be shocked and that the conduct would not cause the public to discredit the police department. In my opinion, the public may, given Constable [REDACTED]'s actions, question his training and his understanding of police policy and procedure, which in turn could reflect negatively on his police department and could bring discredit to the West Vancouver Police Department. The issue to be determined at this stage is whether the evidence appears sufficient to substantiate the allegation. Based on the materials and the evidence, I find the evidence appears sufficient to substantiate the allegation that Constable [REDACTED]'s conduct was discreditable.

27. Having considered the Final Investigation Report and the evidence and records, I am satisfied it appears there are questions regarding whether

Constable █████ neglected his duty by leaving a loaded magazine, an RCMP detachment access card, and a police notebook in his unlocked vehicle. Sergeant █████ reviewed the Criminal Code provisions and the West Vancouver Police Department's policies regarding firearms, ammunition and police notebooks and concluded that Constable █████ committed no misconduct when he left these items in his vehicle. While I agree with her that Constable █████ does not appear to be violating any provision nor contravening policy this conclusion may not be determinative of the matter. The evidence is he did leave police equipment and potentially sensitive information unsecured in his vehicle. A reasonable interpretation of a police officer's duty may include that the officer has an obligation to ensure such items are secure so they will not fall into the wrong hands. Stolen high capacity magazines and ammunition are public safety risks. Access cards and police notes (which may include information regarding witnesses, confidential informants and active police investigations) that are stolen because they are left in an unlocked vehicle would likely concern the public. The issue to be determined at this stage is whether the evidence appears to substantiate the allegation. Based on the materials and the evidence, I find the evidence appears sufficient to substantiate the allegation that Constable █████ neglected his duty.

Conclusion and Next Steps

28. On reviewing the Final Investigation Report and the evidence and the records, I am satisfied, with regard to each allegation of misconduct of the following:
 - a) Corrupt Practice, which is using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member, I find

the evidence does not constitute misconduct. Pursuant to section 117(11), this decision is not open to question or review by a court on any ground and is final and conclusive.

- b) Discreditable Conduct, which is when on or off duty, conducting oneself in a manner that the member knows or ought to know, would be likely to bring discredit on the Police Department, the evidence appears sufficient to substantiate the allegation against Constable [REDACTED] and requires the taking of disciplinary or corrective measures.
- c) Neglect of Duty, which is neglecting without good or sufficient cause to promptly and diligently do anything it is one's duty as a member to do, the evidence appears sufficient to substantiate the allegation against Constable [REDACTED] and requires the taking of disciplinary or corrective measures.

29. I hereby notify the relevant parties of the next steps pursuant to sections 117(7) and (8) of the Police Act.

- a) I have determined that the range of disciplinary or corrective measures being considered for Constable [REDACTED] includes:
 - i. Suspend the member without pay for not more than 30 scheduled working days.
 - ii. Verbal or written reprimand.
 - iii. Give the member advice as to her or his conduct

30. Considering the factors in section 120 of the Police Act, I am willing to offer the member a prehearing conference.

31. The member may, pursuant to section 119(1) file with the discipline authority a request to call and examine or cross-examine one or more witnesses listed in the Final Investigation Report. Such a request must be made within 10 business days of this notification.

Dated at Victoria British Columbia

May 29, 2020

David Pendleton

David Pendleton

Adjudicator