

February 22, 2021

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

AND

IN THE MATTER OF A DISCIPLINE PROCEEDING UNDER SECTION 124

AND

IN THE MATTER OF ALLEGATIONS OF MISCONDUCT AGAINST CONSTABLE

[REDACTED]

OF THE WEST VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S DECISION ON DISCIPLINE OR CORRECTIVE

MEASURES

(Supplement to Form 4)

TO: Constable [REDACTED]

AND TO: [REDACTED]  
Counsel for [REDACTED]

AND TO: Clayton Pecknold  
Police Complaint Commissioner

## I. Introduction

1. On February 1, 2021, I delivered my Findings and Reasons under Section 125(1)(b) of the Police Act. I found that Constable [REDACTED] had committed misconduct by neglecting his duty and conducting himself in a manner he knew or ought to have known would be likely to bring discredit to the West Vancouver Police Department.

## II. The Misconduct

2. The misconduct alleged was that the member while investigating a theft from his vehicle on May 16, 2018 neglected his duty and conducted himself in a manner he knew or ought to have known would be likely to bring discredit to his police department.
3. In my reasons I found the evidence proved on a balance of probabilities that Constable [REDACTED] left his vehicle unlocked allowing two thieves to steal sensitive police information, an access card and dangerous police equipment. He then involved himself in an RCMP police investigation of the theft, which could have jeopardized the subsequent prosecution and potentially put himself and others at risk.
4. At paragraphs 36-44 of the decision I said:

36. The issue in this Discipline Proceeding is whether there is clear, cogent and convincing evidence that proves on a balance of probabilities that Constable [REDACTED] neglected his duty and conducted himself in a manner that he knew or ought to know would be likely to bring discredit on the municipal police force.

37. Mr. ██████ submitted that a reasonable member of the public who was fully apprised of the circumstances, which would include knowing that the RCMP would not likely be able to respond to the call quickly enough to recover the property, would not consider Constable ██████'s actions to be discreditable. With respect, I do not agree that Constable ██████'s conduct meets the reasonable expectations of the community.
38. The community expects police officers to follow appropriate police practices and procedures in the investigation of crimes. When viewed objectively, what Constable ██████ did on May 16, 2018, does not meet the reasonable expectations of the community. I am satisfied that Constable ██████ knew or ought to have known that his conduct would be likely to bring discredit on his police department.
39. I have no doubt that Constable ██████ found himself in an embarrassing situation. He had left his vehicle unlocked when he went to relieve himself. He was concerned about the theft of his notebook and police equipment and he quite properly telephoned his Sergeant. He told Sergeant ██████ about the theft but he did not ask for advice or suggestions as to what to do. He did not tell Sergeant ██████ he planned to get his stolen property back. He did not ask Sergeant ██████ to contact the Surrey RCMP to offer his help in the investigation. Instead, Constable ██████ involved himself in the investigation wrongly assuming the Surrey RCMP were not doing anything. In fact, the evidence establishes that the RCMP had opened a theft file and alerted on-duty members via their police computers. Constable ██████ had been dispatched shortly after the 911 call. Constable ██████ patrolled in the area

and located the alleyway where the suspect vehicle was last seen. Sergeant [REDACTED] went to the registered owners residence looking for the vehicle.

40. Constable [REDACTED] was the victim of a crime but should not have pursued his own investigation. Sergeant [REDACTED] found his actions caused the Surrey RCMP to do extra work before the Crown would approve charges against [REDACTED]. Constable [REDACTED] potentially compromised the prosecution by leaving open the suggestion he offered [REDACTED] an inducement or favourable treatment.
41. Sergeant [REDACTED] concluded that Constable [REDACTED] s conduct in attending Ms. [REDACTED] s residence and going by himself to meet [REDACTED] showed poor judgment and was not tactically wise. She was concerned his actions may have jeopardized his and other police officers' safety. However, Sergeant [REDACTED] felt that if Constable [REDACTED] had not gotten involved it was reasonable to deduce that Mr. [REDACTED] would not have been charged and the stolen property may not have been recovered.
42. In my opinion the fact that no one was injured, that some of the stolen property was recovered and that the prosecution was eventually successful does not resolve the issue of whether Constable [REDACTED] s conduct was discreditable. Discreditable conduct is established if the member knew or ought to have known his conduct would likely result in discredit to the police force, not whether it actually did or not.

43. I am satisfied the reasonable expectation of the community would be that a police investigation be conducted “by the book” following standard police practices and procedures. The community would not expect Constable [REDACTED], who was the victim of a crime, to conduct his own investigation thereby potentially jeopardizing a subsequent prosecution. Constable [REDACTED] went to Ms. [REDACTED]’s residence and to a meeting with Mr. [REDACTED] not knowing whether other people may have been there. By doing so he may have put himself, members of the public and other police officers who may have had to respond at risk. The community would not expect Constable [REDACTED] to put himself into a potentially dangerous situation without appropriate police equipment, without backup and without his commanding officer knowing where he was or what he was doing. I am satisfied, that such conduct would cause a reasonable person in the community to question Constable [REDACTED]’s training and understanding of police practices and procedures, would reflect negatively on his police department and would be likely to bring discredit on the West Vancouver Police Department.
44. Mr. [REDACTED] properly conceded that a police officer who fails to secure a vehicle that contains sensitive police information and potentially dangerous police equipment would commit neglect of duty if the property was lost or stolen. However, he maintains that Constable [REDACTED] was prevented from doing his duty by the emergent situation he found himself in. While there may be situations or circumstances that might excuse an officer from neglecting his duty by failing to lock his car, I am satisfied that [REDACTED] are not an excuse and should not have prevented him from doing his duty to lock his vehicle.

5. The evidence referred to above satisfied me that Constable [REDACTED] had committed the alleged misconduct. The Discipline Proceeding was adjourned to consider submissions from counsel as to the appropriate discipline or corrective measures.

### III. Discipline submission and Position of Counsel

6. Mr. [REDACTED] counsel for Constable [REDACTED], provided a written submission on February 17, 2021. Counsel submitted that the unusual circumstance Constable [REDACTED] found himself in is not likely to occur again, that he understands the importance of locking his police vehicle to ensure the security of any police equipment and sensitive information and that the Police Act investigation of his conduct and the finding that he did misconduct himself have had a significant impact on him. Mr. [REDACTED] submitted that the appropriate corrective measure here is to provide advice to Constable [REDACTED] as to future conduct.

### IV. 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.

#### V. Section 126(3) Considerations

8. The discreditable conduct and neglect of duty that have been proven in this matter arise from Constable [REDACTED]'s failure to follow appropriate police practices and procedures and to take reasonable steps to secure police property. As I said in my reasons, the fact that no one was injured, that some of the stolen property was recovered and that the prosecution was eventually successful does not excuse Constable [REDACTED]. However well intentioned he may have been, he failed to conduct himself as the community would expect.
9. In imposing discipline or corrective measures in this case I must adopt the approach set out in section 126(3) and consider the aggravating and mitigating circumstances in section 126(2). The appropriate outcome should correct and educate the member unless it is unworkable or would bring the administration of police discipline into disrepute.

#### VI. The Aggravating and Mitigating Circumstances Considered

### Seriousness of the misconduct

10. Constable [REDACTED] was the victim of a theft. He involved himself in an RCMP investigation in the course of which he exercised poor judgement that potentially put himself and others at risk and potentially jeopardized a criminal prosecution. While any misconduct that is proven pursuant to the Police Act is serious, in this case Constable [REDACTED]'s conduct is not nearly as serious as that of a police officer who has used unnecessary force, engaged in corrupt practice or been deceitful.

### The members' record of employment

11. Constable [REDACTED] has no service record of discipline.

### The impact of the proposed disciplinary or corrective measures

12. Mr. [REDACTED] has referred to the decision in Joplin v. Vancouver Police Department (Vancouver File No. A922132). In Joplin, Chief Justice McEachern discussed the impact that a finding of even minor misconduct can have on a police officer's life and career. I agree with the comments of the Chief Justice and I am satisfied that the misconduct finding will have a significant impact on Constable [REDACTED] and will act as a reminder to conduct himself in the future as the community would expect.

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

13. Constable [REDACTED] has not indicated he accepts responsibility for the misconduct. Constable [REDACTED] did cooperate with the Police Act investigation

and he gave his evidence in a credible and forthright manner. He acknowledged the potential negative consequences of the loss of his police notebook and equipment.

#### The likelihood of future misconduct

14. Mr. ██████ submitted that there is no reason to expect any future misconduct on Constable ██████'s part. He says that the circumstances are so unusual that it is unlikely that Constable ██████ would ever be faced with the dilemma he encountered. While I agree that another bout of ██████ ██████ are not likely to cause the problems that occurred here, that is not the issue. The concern is whether Constable ██████ will, if faced with some challenging or difficult policing decision, make the right decision and follow acceptable police procedures. I am satisfied that the impact of the investigation and finding of misconduct will act as a reminder to Constable ██████ to follow appropriate police policy and procedure. I find that it is unlikely he will conduct himself in the future as he did on May 16, 2018.

#### Whether the West Vancouver Police Department contributed to the misconduct

15. I do not find this to be a relevant consideration.

#### The range of disciplinary or corrective measures taken in similar circumstances

16. I have not been referred to any cases involving similar circumstances. I have reviewed the OPCC decisions where the misconduct involved contravening police policy and practice. The authorities indicate that an appropriate range of disciplinary or corrective measures would be correcting and educating the member by retraining, reprimanding and giving advice as to conduct.

### Other aggravating and mitigating circumstances

17. The aggravating circumstances are the potential negative consequences of Constables ██████'s errors in judgement. The mitigating circumstances are his lack of any prior misconduct and the unlikelihood of any future misconduct.

### VII. Conclusion

18. 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. I am satisfied having regard to the factors set out in Section 126 that an approach that will correct and educate Constable ██████ is workable and will not bring the administration of police discipline into disrepute.
19. I am satisfied that it is not necessary to discipline the member by reducing his rank, suspending him without pay or transferring him. Nor does he need to retrain, attend counseling or programming. As I said, the Police Act proceedings and the findings of misconduct will act as a reminder that the community expects him to act appropriately. I accept that it is unlikely he will be involved in future misconduct. In my opinion, the disciplinary or corrective measures that could apply in this case are a reprimand or advice as to conduct. It is, in my view, sufficient to provide him with the advice that he follow appropriate police practices and procedures which would include not investigating or take any steps as a police officer in a case where he is a victim, that, when circumstances permit, he consult with his superior officers if he has questions or concerns as to how to proceed and that he not involve himself in any police matter whether on or off duty without his police department knowing where and what he was doing.

20. After considering the material filed on behalf of Constable [REDACTED] and having regard to the circumstances set out in section 126(2) I propose the following sanction:

- a) Advice as to future conduct.

Dated at Victoria, British Columbia,  
February 22, 2021

*David Pendleton*

David Pendleton  
Adjudicator