
OPCC File No.2019-16226
March 26, 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
A MEMBER OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION – SECTION 117(7) POLICE ACT

TO: Constable [REDACTED]
[REDACTED] (the "Member")
c/o Vancouver Police Department
Professional Standards Section

AND TO: Chief Constable Adam Palmer
C/O Sgt [REDACTED] (Investigator)
Vancouver Police Department
Professional Standards Section

AND TO: Mr. Clayton Pecknold
Police Complaint Commissioner (Commissioner)

**DECISION PURSUANT TO SECTION 117(7) OF THE POLICE ACT,
R.S.B.C. 1996, c.367 AND AMENDMENTS THERETO**

AND NOTIFICATION OF NEXT STEPS

I- Decision Summary

1. This is a decision made pursuant to section 117(7) of the *Police Act* relating to certain conduct concerning the Member alleged to have taken place April 17, 2019.
2. I have been appointed Adjudicator in connection with this matter as a result of the Commissioner's order of March 17, 2020 made in accordance with section 117(4) of the *Police Act*.
3. As set out below, in accordance with my appointment as Adjudicator, I have considered the evidence available in the Final Investigation Report dated February 3, 2020 (the "Final Investigation Report"). I have considered such evidence in relation to the following specific allegations of misconduct by the Member:

(i) That on April 17, 2019, the Member committed an act of Corrupt Practice pursuant to section 77(3)(c)(iii) of the Police Act. Specifically, that the Member identified himself as a police officer to a male civilian and attending members of the RCMP for personal gain, or other purposes unrelated to the proper performance of his duties as a member;

(ii) That on April 17, 2019 the Member committed Discreditable Conduct pursuant to section 77(3)(h) of the Police Act in relation to a male civilian, and in relation to his interaction with the attending RCMP members outside [REDACTED] B.C.; and

(iii) That on April 17, 2019 the Member, committed Discourtesy pursuant to section 77(3) (g) of the Police Act in his dealings with a male civilian, and others present, during an incident at [REDACTED], B.C.

(the "Misconduct Allegations")

4. I have concluded that some of the Misconduct Allegations appear to be substantiated based on my review of the evidence in the Final Investigation Report. The misconduct allegations that I find appear to have been substantiated requiring disciplinary or corrective measures are as follows:

(i) That on April 17, 2019, the Member committed an act of Corrupt Practice pursuant to section 77(3)(c)(iii) of the Police Act. Specifically, that the Member identified himself as a police officer to a male civilian for personal gain, or other purposes unrelated to the proper performance of his duties as a member;

(ii) That on April 17, 2019 the Member committed Discreditable Conduct pursuant to section 77(3)(h) of the Police Act in relation to a male civilian, within [REDACTED] B.C.; and

(iii) That on April 17, 2019 the Member, committed Discourtesy pursuant to section 77(3) (g) of the Police Act in his dealings with a male civilian, and others present, during an incident at [REDACTED] B.C.

5. The next steps are set out below, but will commence with a new disciplinary hearing on the Misconduct Allegations that appear to be substantiated involving the Member. As well, the Member will be offered a Pre Hearing Conference if he wishes to pursue that option.

II History of Proceedings

6. On April 25, 2019 the Office of the Police Complaint Commissioner (the “OPCC”) received information from the Vancouver Police Department (the “VPD”) in relation to certain off duty conduct of the Member alleged to have taken place April 17, 2019. The VPD had been advised of the incident in question by both the Member and officers of the [REDACTED] RCMP.
7. On May 8, 2019 the OPCC asked the VPD whether they would be requesting an order for an investigation into the conduct of the Member. VPD advised the OPCC that it was their view that the conduct in question did not meet the criteria for a request for an ordered investigation.
8. On May 14, 2019 the Commissioner ordered an investigation into the conduct of the Member.
9. The Final Investigation Report resulting from the Commissioner’s order was delivered February 3, 2020.
10. Inspector [REDACTED] of the VPD, the initial Discipline Authority, reviewed the Final Investigation Report and issued her decision February 18, 2020. Inspector [REDACTED] concluded that the evidence did not appear to substantiate any of the Misconduct Allegations.
11. On March 17, 2020 the Commissioner completed a review of Inspector [REDACTED]’s decision in accordance with section 117(1) of the *Police Act*. The Commissioner determined that there was a reasonable basis to believe that the decision of the Inspector [REDACTED] as initial Discipline authority was incorrect. As a result of reaching that conclusion, the Commissioner acted pursuant to section 117(4) of the *Police Act* to facilitate my appointment as Adjudicator.

III Section 117

12. The statutory authority governing this review is found in section 117 of the *Police Act*.
13. Specifically, subsection 117(6) of the *Police Act* imposes a duty on the Commissioner to provide the Adjudicator with copies of all reports under section 98, 115 and 132 that may have been filed with the Commissioner prior to the Adjudicator's appointment in relation to the allegations of misconduct.
14. The central role of the Adjudicator as set out in subsections 117 (8) and 117(9) of the *Police Act* is to independently review the material delivered under subsection 117(6), and to determine whether or not the conduct of the Member appears sufficient to substantiate misconduct within the meaning of Part 11 of the *Police Act* requiring disciplinary or corrective action.
15. The law is clear that a review under section 117 is a paper based process of the record provided by the Commissioner. It takes place without live witnesses, additional evidence or submissions from any of the parties involved. The review is not an appeal of earlier decisions concerning misconduct nor is it a redetermination in any manner of other proceedings that may have a connection to the misconduct alleged.
16. The Adjudicator's role is not to decide the facts concerning the matters in issue at this stage in the process. Rather, the adjudicative role in this part of the process is to determine whether or not the evidence appears to substantiate potential misconduct requiring some form of sanction or corrective measures.
17. The duty of an Adjudicator under subsection 117(1)b is to reach their own conclusions based on the materials submitted for review without submissions or further evidence adduced by way of a hearing.
18. The Supreme Court of British Columbia provided useful specific guidance on the role of Adjudicators serving under section 117 of the *Police Act*. In *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970, the Honourable Mr. Justice Affleck considered an earlier Adjudicator decision provided under section 117, noting as follows:

[27] *There are two troubling aspects to the approach to his task taken by the retired judge.*

[28] *The first is his implicit interpretation of s. 117(9) of the Act that it permitted him at an early stage of his inquiries to reach conclusions about the petitioner's conduct.*

[29] In *Florkow v. British Columbia (Police Complaint Commissioner)*, 2013 BCCA 92, Newbury J.A. observed that part XI of the *Act*, where s. 117 is found, “is not a model of clarity”. Section 117(9) fits that description, but in my opinion it is clear that it authorized the retired judge to do no more than express a view that the petitioner’s conduct on April 22, 2016 “appears” to have been misconduct. To have gone beyond an expression of a preliminary review by giving extensive reasons using conclusory language, such as asserting that the petitioner’s “conduct was a marked and serious departure from the standard reasonably expected of a police officer” is not consistent with the scheme and object of the *Act* and the intention of the legislature (see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.

[30] In my opinion the legislature did not intend the retired judge, whose ultimate role could include presiding over a disciplinary hearing involving the very person whose conduct he had already determined was improper, nevertheless could use language, before a hearing had taken place, that on any reasonable reading left no doubt in the mind of the petitioner that the retired judge had already made up his mind that the petitioner was guilty of the misconduct alleged.

[37] In my opinion, the retired judge improperly conflated the issue of whether the petitioner was in the course of his lawful duties when he entered the complainant's home and arrested her, with the other issue of whether the petitioner was guilty of misconduct by abusing his authority as defined in the *Police Act*. That conflation is apparent from the retired judge's conclusion that:

It follows, therefore, that the question of whether A/S Scott abused his authority must be determined according respect for the factual findings of the trial judge. Respect for those findings of fact would result in the conclusion that A/S Scott had abused his authority. ...

[39] Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken. If that was the appropriate interpretation it would inevitably raise a serious issue of an apprehension of bias when the retired judge made preliminary findings adverse to the petitioner and was then required to conduct a disciplinary hearing. I conclude that the retired Judge adopted an interpretation which has now led to that unfortunate outcome.

19. This review has been undertaken in accordance with the foregoing principles and law.

IV Records submitted for review

20. In accordance with subsection 117(6) of the *Police Act*, the Commissioner has provided the Final Investigation Report for my review which was prepared by Sgt. [REDACTED] VPD, Professional Standards Section. The report, dated February 3, 2020 comprises 59 pages plus extensive related attachments. It details the evidence of all relevant parties concerning the Misconduct Allegations.
21. The Final Investigation Report and related materials were delivered to me March 19, 2020. Section 117(9) of the *Police Act* confirms that my review must be completed within 10 business days with notice to the relevant parties of my decision and next steps.

V Misconduct and the Police Act- Allegations considered – Section 117(8)c

22. The evidence set out in the Final Investigation Report outlines in considerable detail the perspectives of the Member, his spouse, a civilian male, attending members of the [REDACTED] RCMP and other relevant witnesses. The report also includes, interim reports, emails, interview summaries, an extensive collection of collateral materials on Vancouver Police Department policies, case law and general principles associated with use of motor vehicle accident investigations. Photos and a video clip relevant to the incident in question are also part of the report.
23. As is common in the analysis of such matters, there are inconsistencies between the accounts of the various parties as the evolution of events on April 17, 2019 took place. As noted above, my role at this point is to determine, based on a consideration of the totality of the evidence set out in the Final Investigation Report, whether or not it appears that the Misconduct Allegations are substantiated, thereby warranting consideration of disciplinary or corrective measures.
24. As noted by the Commissioner in his order of March 17, 2020, section 117(8) (c) of the *Police Act* confirms that it is my duty to consider all of the relevant evidence in order to determine whether or not any other misconduct may be relevant in considering the actions of the Member in the context of the Final Investigation Report.
25. Turning to the specifics of possible misconduct and the *Police Act*, section 77 of that Act sets out the definition of “misconduct” that appears to be relevant to the Misconduct Complaints. Specifically, subsection 77 of the *Police Act* provides, in part, as follows:

77(1) In this Part, "**misconduct**" means

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(c) "corrupt practice", which is

(iii) 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;

(g) "discourtesy", which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member;

(h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

(i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;

(ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act;

26. An important overall limitation to the definitions of misconduct in section 77 of the *Police Act* is found in subsection 77(4) as follows:

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.

VI Misconduct Allegations arising from the Final Investigation Report

27. This review must independently assess the circumstances of the Member's interactions with various parties and the totality of the circumstances relating to the same as set out in the Final Investigation Report.

28. This includes consideration of the Member's engagement with the RCMP officers attending in response to the incident in question.

VII The Evidence arising from the Final Investigation Report

29. My review of the Final Investigation Report and the evidence and records referenced in it discloses the following evidence, which if proven, may have relevance to the questions of misconduct raised in this review. I note, of course, that identifying the facts that appear to form the basis of evidence relevant to the allegations does not result in the conclusion that such facts would ultimately be proven.
30. The evidence in the Final Investigation Report that I have specifically considered that appears to be relevant to the matters in issue can be summarized as follows:
- (a) On April 17, 2019 the Member and his wife ██████ drove to the offices of ██████ in ██████ BC. They arrived at approximately 10:15 am. The Member had driven in his personal vehicle, a large pickup truck, parking the same in the lot outside the ██████ office;
 - (b) The stall next to the driver's side door was empty, although a vehicle was parked next to the passenger side door of the Member's vehicle;
 - (c) The Member exited his vehicle and entered the ██████ office. The Member's wife remained in the truck;
 - (d) Shortly thereafter, a vehicle pulled into the parking space adjacent to the Member's truck;
 - (e) It appears that the Member's truck was parked with the edge of its driver's side tires touching the white line marking the parking space adjacent to the newly arrived vehicle. As such, the space between the two vehicles was extremely tight;
 - (f) The male driver of the newly arrived vehicle, Mr. ██████ had parked his van opposite to that of the Member with the result that both drivers' doors were side by side;
 - (g) As Mr. ██████ exited his vehicle, it appears that there was some degree of contact between the two vehicles as Mr. ██████'s door opened. The degree and nature of contact is disputed;
 - (h) Ms. ██████ reported that the door opening was an impact "so hard it shook the truck". Ms. ██████ further reported that she immediately opened the passenger door and said to Mr. ██████ "Excuse me sir, you just hit our truck";
 - (i) Mr. ██████, who was walking towards the ██████ offices, appears to have initially responded denying that there was any contact with the Member's truck;
 - (j) Ms. ██████ reports that her tone escalated as she continued to confront Mr. ██████ on the alleged vehicle hit. In response, Ms. ██████ advised that Mr. ██████ began swearing at her, continuing to deny any damage to the Member's vehicle as he walked to the ██████ entrance;
 - (k) What happened next appears to be in issue, however, it does appear that unsatisfied with Mr. ██████'s response, Ms. ██████ called the Member who was then in the ██████ office;

- (l) It appears that the Member was told by Ms. [REDACTED] that his vehicle had been hit, although the details provided were unclear from the reports provided in the Final Investigation Report. He was also apparently told that the other driver of the vehicle involved was swearing at Ms. [REDACTED];
- (m) Within seconds the Member appears to have exited [REDACTED] encountering Mr. [REDACTED] attempting to enter;
- (n) Prior to this encounter, it does not appear that either the Member or his spouse had confirmed exactly what had happened to the Member's truck, if anything. In particular, it does not appear that either party had confirmed that any damage had resulted from Mr. [REDACTED] opening his vehicle door;
- (o) The Member next appears to have challenged Mr. [REDACTED] on two issues: swearing at his wife and hitting his vehicle. On the second issue, the Member appears to have immediately told Mr. [REDACTED] that he was required by law to provide his driver's license as he was involved in an accident;
- (p) Mr. [REDACTED] appears to have denied swearing at the Member's wife and also denied the need to produce his driver's license as demanded, denying any accident had taken place;
- (q) The Member appears to have continued to demand production of Mr. [REDACTED]'s driver's license in an increasingly intense argument. Mr. [REDACTED] appears to have continued to refuse to comply with the Member's demands;
- (r) There are varying perspectives on the exchange that took place in the parking lot. It appears, however, that Ms. [REDACTED] was upset by what was taking place. As a result, she placed a call to 911. The report of that call in the Final Investigation Report notes that Ms. [REDACTED] advised that a door had been opened into the side of her husband's vehicle and that the driver and her husband, an off duty police officer, were engaged in a yelling match in the parking lot. She further reported that the argument had continued out of her sight inside the [REDACTED] offices as the two men entered the building. The dispatcher confirmed that an RCMP officer would be dispatched;
- (s) As the two men entered [REDACTED], several other customers were also in the room. One of those customers began a video recording of part of the interaction between the Member and Mr. [REDACTED] in the [REDACTED]'s lobby;
- (t) Mr. [REDACTED] appears to have been attempting to drop off a sample requiring refrigeration. As Mr. [REDACTED] attempted to stand in line waiting for service, the Member appears to have continued his efforts to secure Mr. [REDACTED]'s driver's license. The ostensible reason was to identify Mr. [REDACTED] as the driver of the vehicle that had been involved in an "accident" with the Member's truck;
- (u) Mr. [REDACTED] continued to deny any accident had taken place and resisted the Member's efforts to secure his driver's license;
- (v) As the video begins, it appears that the Member moved repeatedly to block moves of Mr. [REDACTED] in the lobby area so as to ensure that the Member's message was being received;

- (w) It also appears that the person taking the video was also adding his perspective to the issue, repeatedly telling the Member that there was no reason for Mr. ██████ to provide a driver's license. He was also apparently telling the Member to take the dispute out of the ██████ lobby area to avoid further disturbing people waiting in the lobby;
- (x) The Member and Mr. ██████ appear to have had an intense argument, but did not appear to involve cursing or yelling, at least on the video segment;
- (y) Twice during the ██████ lobby conflict between the Member and Mr. ██████ the Member retrieved and produced what appears to have been his police officer identification. He appears to have done so confirming to Mr. ██████ that as a VPD police officer, he knew what was required of Mr. ██████ as a driver;
- (z) It appears that the Member produced his identification in an effort to convince Mr. ██████ to comply with the demand to produce his driver's license;
- (aa) Mr. ██████ appears to have continued to resist the Member's demands, however, the exchanges between the Member and Mr. ██████ while forceful and animated, did not appear to have escalated to yelling and profanity in the lobby area;
- (bb) At some point before police identification was produced by the Member, he appears to have taken the position that he had decided to put himself on duty. The Member appears to have believed that doing so was necessary to investigate an "accident" involving his vehicle, although the basis for that coming to that conclusion appears questionable;
- (cc) In the Final Investigation Report, paragraph 34.5, the Member appears to have further justified his actions by asserting that:

"I had chosen to start to investigate ah a collision that had occurred to my own personal vehicle and ah and that I had reasonable grounds to believe a hit and run had occurred and ah that the motorist was refusing to identify himself."
- (dd) The factual basis for coming to that conclusion appears questionable at best. It does not appear, however, that the Member announced his decision or advised anyone, including the attending RCMP, that he was on duty at any point or conducting any form of investigation;
- (ee) The video confirms that the interaction with the Member and Mr. ██████ had actively involved the person recording events. The unidentified third party was engaged in a collateral argument with the Member challenging his position on the production of Mr. ██████'s driver's license;
- (ff) The third party appears to have repeatedly told the Member to take the dispute outside so as not to further disturb persons waiting in the ██████ lobby;
- (gg) Ms. ██████ was working at the lobby desk at the ██████ office on April 17, 2019. Ms. ██████ appears to have witnessed first-hand the lobby interactions between the Member and Mr. ██████;
- (hh) Ms. ██████ reports that Mr. ██████ was approaching her desk, apparently attempting to drop off a sample. Ms. ██████ further reports the before Mr. ██████ reached her desk, another person, later identified as the Member, kept trying to "get in (Mr. ██████'s) face";

- (ii) The Member was apparently doing so loudly with repeated demands to see Mr. [REDACTED] s license arguing that he had hit the Member's vehicle resulting in an accident;
- (jj) The Member was also reported to have justified his position by stating he was a VPD police officer;
- (kk) Ms. [REDACTED] reported on and noted the engagement of the third party in the lobby who had disputed the Member's position and demanded the dispute be taken outside;
- (ll) Ms. [REDACTED] appears to have confirmed the repeated efforts of the Member to block the movement of Mr. [REDACTED];
- (mm) The matter ended in the lobby when the office Manager, [REDACTED], appeared and according to Ms. [REDACTED] appears to have told the Member to take the conversation outside "because they were causing a lot of ruckus". It appears, however, that Ms. [REDACTED]'s interview did not specifically confirm that direction;
- (nn) Ms. [REDACTED] had been called out by front office staff. It does not appear that Ms. [REDACTED] had witnessed any of the interactions between the Member and Mr. [REDACTED] recorded on the video;
- (oo) Ms. [REDACTED] appears to have believed that the Member was "very respectful and polite", just wanting to get the information from Mr. [REDACTED]. In terms of his dealings with the third party, Ms. [REDACTED] noted that the Member was polite but stern telling the third party to stay out of the dispute;
- (pp) As the video shows, the Member, followed by Mr. [REDACTED] left the [REDACTED] lobby and the matter continued outside;
- (qq) As he exited, the Member appears to have continued his argument with the third party, telling that third party to, in effect, mind his own business;
- (rr) Outside [REDACTED] the RCMP had arrived in the person of Cst. [REDACTED] dispatched to a call of a disturbance. On arrival Cst. [REDACTED] noted that the parties were separated: The Member and his wife were about two meters away from Mr. [REDACTED];
- (ss) Cst. [REDACTED] was aware as a result of the dispatch information that one of the parties was an off duty VPD officer;
- (tt) Ms. [REDACTED] first engaged Cst. [REDACTED] and appears to have confirmed that Mr. [REDACTED] had been yelling at her;
- (uu) Cst. [REDACTED] reported that Ms. [REDACTED] had asked for Mr. [REDACTED] s ID because he opened his car door into her husband's vehicle. Ms. [REDACTED] did not appear to have reported that Mr. [REDACTED] was threatening, but rather aggressive in denying he had to provide anything to her;
- (vv) The Member produced his identification as a VPD officer to Cst. [REDACTED]. The Member reports that he did so in response to a query from one of the RCMP officers;
- (ww) In describing what had taken place, he appears to have reported on the exchange with Mr. [REDACTED] both inside and outside [REDACTED]. He confirmed that it was his view Mr. [REDACTED] was basically failing to remain at the scene of an accident and was required to produce his ID. As well, the Member was complaining that Mr. [REDACTED] had yelled at his wife;
- (xx) It does not appear, however, that the Member advised Cst. [REDACTED] that he had placed himself on duty to investigate the alleged accident with Mr. [REDACTED]

- (yy) Cst. [REDACTED] then spoke to Mr. [REDACTED] who admitted that the vehicles were parked in “pretty close proximity” and that he had in fact hit the Member’s driver’s door when he opened his door, but maintained that there wasn’t a “nick or scratch”, and hence, no need to go to ICBC or have police attend;
- (zz) Mr. [REDACTED] appears to have reported that had the Member been respectful, he would have complied with the request to produce his ID. However, he expressed a concern to Cst. [REDACTED] that the Member’s conduct was not respectful in identifying himself as a police officer or pursuing the issue of identification as he had. Mr. [REDACTED] appears to have been “super upset” that a police officer would act as the Member did off duty and relayed that to Cst. [REDACTED];
- (aaa) Cst. [REDACTED] appears to have concluded that the only reason for the Member to identify himself as a police officer was to obtain Mr. [REDACTED]’s driver’s license;
- (bbb) Cst. [REDACTED] also appears to have confirmed that he saw no damage to the Member’s vehicle;
- (ccc) Cst. [REDACTED]’s main role appears to have been to act as mediator to calm down the parties ultimately facilitating the exchange of identification information;
- (ddd) A second RCMP officer arrived on scene, Cst. [REDACTED];
- (eee) Cst. [REDACTED] appears to have observed that the parties in the parking lot were standing a short distance apart;
- (fff) Mr. [REDACTED] appeared upset, but calm. Ms. [REDACTED] was also shaken up and upset. The Member appeared to be upset and mad;
- (ggg) Cst. [REDACTED] inspected both vehicles and could identify no damage or dents at all, nothing that she could take a photo of. Cst. [REDACTED] reported that she did not understand “what the big issue was over the car door being opened”;
- (hhh) The Member appears to have identified himself to Cst. [REDACTED] as an off duty VPD member, but did not produce identification. It was Cst. [REDACTED]’s view that the Member “was happy to say that, as maybe an advantage on his side”. It appears that the impression left with Cst. [REDACTED] was that the Member may have been trying to seek favour by identifying himself as a police officer;
- (iii) Mr. [REDACTED] was reported to be calm, and readily produced his identification when requested by Cst. [REDACTED] apparently explaining that he did not do so earlier because of the Member’s attitude;
- (jjj) The incident ended with the Member receiving a photocopy of Mr. [REDACTED]’s driver’s license; and
- (kkk) Photos in the Final Investigation Report appear to show part of a dark vehicle door, however, the photos are of such poor quality, they have no evidentiary utility.

VIII Analysis of the Misconduct Allegations-

Does the evidence appear sufficient to substantiate the Misconduct Allegations? Sections 117(8)(d)(i)

31. I now turn to an analysis of the evidence considering each of the Misconduct Allegations in turn.
32. At this stage I must consider whether or not the evidence adduced in the Final Investigation Report that is summarized above appears sufficient to substantiate some, or all, of the Misconduct Allegations.

Misconduct Allegation (i)

33. The first allegation of potential misconduct relates to the interactions of the Member with Mr. [REDACTED] and attending RCMP officers. To repeat, the first allegation is as follows:

(i) That on April 17, 2019, the Member committed an act of Corrupt Practice pursuant to section 77(3)(c)(iii) of the Police Act. Specifically, that the Member identified himself as a police officer to a male civilian and attending members of the RCMP for personal gain, or other purposes unrelated to the proper performance of his duties as a member;

34. As noted in the evidentiary summary, it appears that the Member first identified himself as a police officer to Mr. [REDACTED] during the interaction that took place in the [REDACTED] lobby area. At the time this took place, it appears that the Member had:
- Been told by his wife that his vehicle had been hit by Mr. [REDACTED] as he opened his door;
 - Not inspected the vehicle for damage, nor had his spouse;
 - Exited [REDACTED] and encountered Mr. [REDACTED] in the parking lot as he walked towards [REDACTED];
 - Challenged Mr. [REDACTED] in the parking lot on language used in talking to Ms. [REDACTED] and repeatedly demanded Mr. [REDACTED] s driver's license because there had been an accident involving Mr. [REDACTED];
 - Followed Mr. [REDACTED] into [REDACTED] continuing to demand his driver's license insisting that his vehicle had been in an accident and that, as such, Mr. [REDACTED] had a legal duty to provide his driver's license to the Member;
 - Repeatedly blocked Mr. [REDACTED] s attempts to move in the [REDACTED] lobby as he aggressively continued his demands for identification, without success;

- (g) Decided to place himself on duty to investigate a hit and run involving damage to his vehicle without advising any party present of that decision;
- (h) Identified himself to Cst. [REDACTED] as a VPD officer and produced his badge in doing so; and
- (i) Identified himself as an “off duty” VPD officer to Cst. [REDACTED], but did not produce his badge.

35. It appears that the Member’s primary objective on the morning of April 17, 2019 was to secure driver’s license identification from Mr. [REDACTED]. It appears that the Member was relentless in pursuing this goal and had not thought to simply step back and call local RCMP to follow up.

36. Whether or not the Member was lawfully entitled to Mr. [REDACTED]’s identification appears in doubt at best. However, it appears that by producing his police identification and demanding Mr. [REDACTED]’s driver’s license, the Member believed he had created a legal duty on Mr. [REDACTED] to comply with his demands. It also appears that the dominant purpose for the demand was to further the Member’s personal interests in ensuring that damage to his vehicle would be the responsibility of Mr. [REDACTED] and not the Member.

37. The law with respect to consideration of an alleged corrupt practice under section 77(3)(c)(iii) was considered in *Stone v Toronto Police Service*, a 1990 decision of the Ontario Police Commission. In that decision, the Police Commission adopted the judge adjudicator’s distinction between “corrupt practice” and “discreditable conduct”:

“We agree with Judge Salhany’s view that “the charge of discreditable conduct” is directed towards the question of bringing discredit upon the reputation of the police force. The charge of “corrupt practice” is directed towards the particular conduct of the officer charged, that is conduct personal to him” We also find that such a distinction is valid and sufficient to take this matter out of the application of the Kineapple principle”
<https://www.canlii.org/en/on/onnpc/doc/1990>

38. On the facts set out in the Final Investigation Report, it appears that the Member’s intention in displaying his badge twice to Mr. [REDACTED] and identifying himself as a police officer was to compel Mr. [REDACTED] to produce his driver’s license. It also appears that the production of the driver’s license was something that the Member sought for personal reasons, rather than in pursuance of a genuine investigation.

39. He appears to have believed, without facts, that his vehicle had been involved in an “accident” with Mr. [REDACTED]. It appears that an “accident” under the *Motor Vehicle Act*, section 68, requires some element of damage, which did not appear to exist in this case: *ICBC v Pariah Productions Inc*, 2010 BCSC 164.

40. Putting himself on duty to compel the production of identification does not appear to have been necessary or appropriate for the Member in all of the circumstances.
41. First, it does not appear that there was any matter that had arisen which required investigation. Mr. ██████ did not appear to be leaving the scene of an accident as suggested by the Member. In fact, it appears that he was attempting to leave a sample at the ██████ office and remained for some time engaging the Member in an argument and ultimately talking to attending RCMP.
42. Second, any investigation would appear to have been limited to a matter affecting the Member's personal interests, a matter more appropriately dealt with by local police, the RCMP absent an emergency. It appears that local RCMP were immediately available to investigate, if something required investigation.
43. Fourth, Mr. ██████'s license plate appears to have been plainly visible providing evidence of vehicle registration and the vehicle itself remained parked as it had arrived throughout the incident.
44. As well, as noted above, it does not appear that the Member advised anyone, including the RCMP, of a decision to put himself on duty. The Member did not appear to advise the RCMP that he believed that he was required to investigate any matter, nor did he appear to advise those officers that he was relinquishing his investigation to their authority.
45. As such, it appears that the only rationale for the Member displaying his badge to Mr. ██████ and advising of his VPD officer status was to convince Mr. ██████ to comply with the Member's demands. It appears, therefore, that such action was purely personal, for the benefit or gain of the Member, and unrelated to the proper performance of his duties as an officer.
46. In his dealings with Cst. ██████ the Member had produced his badge and confirmed that he was a VPD Officer. Cst. ██████ knew that an off duty police officer was involved in the matter as a result of the dispatch to the site.
47. Cst. ██████ appears to have formed the view that the reason the Member identified himself to her was to secure some form of advantage. However, it does not appear that any concessions or benefits were sought by the Member from Cst. ██████ or Cst. ██████.
48. Considering the totality of the evidence, it does not appear that there is evidence, beyond suspicions, that the Member identified himself to the attending RCMP officers for personal gain. Both attending officers knew that one of the parties was an off duty VPD officer. It appears that confirming that identity was, at least for Cst. ██████ required to ensure the person involved was not impersonating a police officer.

49. It does not appear that there is evidence to support the conclusion that the Member identified himself as a VPD officer to the attending RCMP for personal gain, or a purpose unrelated to his duties as a police officer.
50. As such, I have concluded that Misconduct Allegation (i) appears to be substantiated in part. It appears substantiated with respect to the Member's conduct in identifying himself as a VPD officer in his dealings with Mr. [REDACTED]
51. However, it does not appear to be substantiated in connection with the Member's identification of himself as an officer to either Cst. [REDACTED] or Cst. [REDACTED]
52. The misconduct allegation that appears substantiated on the evidence in the Final Investigation Report, therefore, is:

(i) That on April 17, 2019, the Member committed an act of Corrupt Practice pursuant to section 77(3)(c)(iii) of the Police Act. Specifically, that the Member identified himself as a police officer to a male civilian for personal gain, or other purposes unrelated to the proper performance of his duties as a member;

Misconduct Allegation (ii)

53. The second allegation of misconduct considered is as follows:

(ii) That on April 17, 2019 the Member committed Discreditable Conduct pursuant to section 77(3)(h) of the Police Act in relation to a male civilian, and in relation to his interaction with the attending RCMP members outside [REDACTED] B.C.;

54. Discreditable conduct is defined in section 77 (3) (h) of the *Police Act* as follows:

(h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

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

55. Many of the facts relating the allegation of Discreditable Conduct are essentially the same as those considered in Misconduct Allegation (i). There are, however, some additional facts that appear relevant. Specially, it appears that:

- (a) Several persons were seated in the lobby area of [REDACTED] where the Member was challenging Mr. [REDACTED]. The facility, of course was a medical office. Mr. [REDACTED] was attending to drop off a sample requiring refrigeration. The Member was initially attending for an unspecified matter;
- (b) The dispute initiated by the Member with Mr. [REDACTED] took place throughout the general lobby area of [REDACTED] in front of the seated patients;
- (c) The medical staff at [REDACTED] were concerned enough with the argument between the Member and Mr. [REDACTED] that a manager was called to deal with the dispute;
- (d) At least one member of the public in the [REDACTED] lobby area voiced clear objection to the Member's pursuit of Mr. [REDACTED] in the medical facility suggesting the dispute be taken outside;
- (e) Rather than accede to the apparent reluctance of Mr. [REDACTED] to engage, or the objections of a member of the public in the lobby area, the Member appears to have escalated matters by identifying himself as a Vancouver Police Officer and twice brandishing his identification as such;
- (f) Although the Member ultimately moved to leave the lobby and take the argument outside, he did so while maintaining an ongoing argument with the individual who had been video recording events, ultimately directing that person to, in effect, mind his own business; and
- (g) Outside the lab, matters returned to a more orderly exchange of positions as a result of the arrival of the RCMP.

56. In OPCC case 2017-13143, at page 5, Adjudicator Baird Ellan summarized the law set out by Adjudicator Filmer in Berndt Public Hearing, PH 11-01 and a further decision of Adjudicator Allan in OPCC file 2012-7741 as follows:

"Generally, a consideration of discreditable conduct entails and analysis of the nature of the conduct and then a consideration of the officer's state of knowledge regarding whether it is likely to bring discredit on the department.

The issue in relation to whether displaying a badge or identifying oneself as a police officer is discreditable conduct turns on whether there is subjective or objective evidence to support a conclusion that the officer did so for the purpose of gaining preferential treatment: OPCC File 2015-10904.

There is consensus among adjudicators that if a finding of intent to gain favour is made, the action constitutes discreditable conduct. On this point, the decisions commonly refer to community standards: that is, the expectation of the public that police officers will be treated the same as any other citizen. The finding of

intent on the part of the officer has been considered determinative of the issue: there is generally no separate analysis of whether he knew or ought to have known the conduct was likely to discredit the department.”

57. In *Mancini v Constable Martin Courage*, OCCPS #4-09, the Ontario Civilian Commission on Police Services set out a practical definition of the concept of Discreditable Conduct which I endorse:

“The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.”

58. Conflict of interest is another matter which appears relevant in examining the Member’s conduct, particularly in relation to section 77 (3) (h) (ii) of the *Police Act*.

59. It appears that at the time of the incident, the Member was bound by policies of the VPD relating to conflict of interest. Specifically, section 4.1 of the VPD Professional Standards regulations and procedures Manual provides that:

“Conflict of interest means a conflict between duties and responsibilities as an employee of the Vancouver Police Department, and an employee’s personal and/or business interests, and includes actual or perceived conflicts”

60. Although the provision noted above defines a conflict of interest, I have not been able to locate a specific guideline prohibiting members from acting in a conflict of interest. Although it seems logical that such would be the case, the lack of a specific direction does not appear to be set out in the VPD policies and guidelines.

61. As such, it does not appear that section 77(3) (h)(ii) and consideration of a conflict of interest has direct application to the facts of this review.

62. What does appear relevant is that throughout the incident in question, the Member appears to have been acting to pursue a matter directly relevant to his personal interests. Such action would appear to meet the definition of a “conflict of interest” in the VPD policies, however, as noted, I have been unable to identify a specific prohibition on such action in the policy guidelines.

63. However, on the facts set out in the Final investigation Report, it does appear that the Member:
- (a) Was aware he was continuing a private, animated argument with Mr. [REDACTED] in the lobby of a public medical facility;
 - (b) Was aware that there were several members of the public in the [REDACTED] lobby area witnessing the dispute;
 - (c) Continued the argument despite objections from at least one person in the lobby and front line staff of [REDACTED]; and
 - (d) Escalated the argument by announcing his status as a VPD officer producing his badge, not once, but twice, with the result that all present were aware a VPD officer was disturbing their visit for unspecified reasons.
64. It appears that community standards relating to Misconduct Allegation (ii) would be affected by:
- (a) The nature of the conduct, which was an aggressive and persistent argument initiated by the Member and continued inside the [REDACTED] lobby;
 - (b) The location in which that argument took place, a private medical lab;
 - (c) The number of members of the public present for the argument, of which there were several; and
 - (d) The perceptions and reactions of the public present to the Member's conduct, which was negative on the part of at least one person who spoke up and video recorded the events as well as front end staff at the lab.
65. It appears that community standards would place a high value on creating an environment of safety, security and indeed peace inside a medical facility like [REDACTED]. It is common knowledge that attendees at such offices arrive to undergo medical testing and anything creating increased stresses for those present should logically be avoided.
66. It appears that from consideration of all of the foregoing, the community of [REDACTED] had a reasonable expectation that the [REDACTED] offices would be a place a peace and security, not the focus of an animated and persistent argument involving an off duty police officer with respect to a personal matter.
67. It appears that had the Member stopped to reflect on his actions, the location of his actions and the reactions of those present, including Mr. [REDACTED], he would have realized that he was acting outside reasonable community expectations pursuing a questionable objective with dubious authority. It appears that the Member ought to have known that his actions in the lobby of [REDACTED] would have been likely to bring discredit to the VPD;
68. In all of the circumstances, it appears that Misconduct Allegation (ii) is substantiated, in part, on the evidence in the Final Investigation Report.

69. The evidence does not appear to substantiate misconduct by discreditable conduct once the Member left [REDACTED] and began interacting with the RCMP. It appears that the Member's interaction with Mr. [REDACTED] attending RCMP officers and others once he left [REDACTED] for a second time was within community expectations for such an incident.

70. The misconduct allegation that appears substantiated, therefore, is:

(ii) That on April 17, 2019 the Member committed Discreditable Conduct pursuant to section 77(3)(h) of the Police Act in relation to a male civilian, within [REDACTED] B.C.;

Misconduct Allegation (iii)

71. The last misconduct allegation being considered is as follows:

(iii) That on April 17, 2019 the Member, committed Discourtesy pursuant to section 77(3)(g) of the Police Act in his dealings with a male civilian, and others present, during an incident at [REDACTED] B.C.

72. Section 77(3)(g) provides as follows:

(g)"discourtesy", which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member;

73. The facts noted above appear to show that the Member was discourteous in his dealings with Mr. [REDACTED] and the patients in the [REDACTED] lobby. By any objective standards, the Member's pursuit of Mr. [REDACTED] into the [REDACTED] office and continued argument with him while identifying himself as a VPD officer appears to have lacked the courtesy due in the circumstances.

74. There is a potential issue on the scope of the "performance of duties as a member" and whether that would application on the facts of this case. It appears, however, that one of the Member's duties was to behave with courtesy while on or off duty, particularly when he had identified himself as a VPD officer. By producing identification and announcing his status as a VPD officer, the Member has appeared to link his conduct with his role as a police officer.

75. As such, it appears that the Member's obligation to engage Mr. [REDACTED] and others in the [REDACTED] lobby area courteously was clearly established as a result of the circumstances associated with the Member's actions.

76. I conclude that the evidence in the Final Investigation report appears to substantiate Misconduct Allegation (iii)

IX Conclusion

77. Applying the standard of review at this stage of the proceedings, pursuant to Section 117(9) and 117(8)(d)(i) of the *Police Act*, I find that there appears to be evidence set out in the Final Investigation Report which, if proven, could substantiate the following Misconduct Allegations, establish misconduct, and require the taking of disciplinary or corrective measures:

(i) That on April 17, 2019, the Member committed an act of Corrupt Practice pursuant to section 77(3)(c)(iii) of the Police Act. Specifically, that the Member identified himself as a police officer to a male civilian for personal gain, or other purposes unrelated to the proper performance of his duties as a member;

(ii) That on April 17, 2019 the Member committed Discreditable Conduct pursuant to section 77(3)(h) of the Police Act in relation to a male civilian, within [REDACTED] B.C.; and

(iii) That on April 17, 2019 the Member, committed Discourtesy pursuant to section 77(3) (g) of the Police Act in his dealings with a male civilian, and others present, during an incident at [REDACTED] B.C.

78. In accordance with section 117(11) of the *Police Act*, my decisions on the misconduct matters that do not appear to be substantiated are final and conclusive.

X Next Steps

79. I hereby notify the relevant parties of the next steps in this proceeding, pursuant to subsections 117(7) and (8) of the *Police Act*.

80. Considering the factors in section 120 of the *Police Act*, and in particular section 120(3), I am willing to offer a prehearing conference to the Member with respect to the misconduct allegations that appear to be substantiated.

81. I am directing the Member to advise the Registrar within 5 days once a decision has been made on whether or not to accept the offer of a prehearing conference.

82. The range of disciplinary and corrective measures set out in the *Police Act* which I would consider appropriate in the current case includes:

- a. *giving advice to the members as to their conduct,*
- b. *verbal or written reprimand, and or*
- c. *requiring the members to engage with training or retraining,*

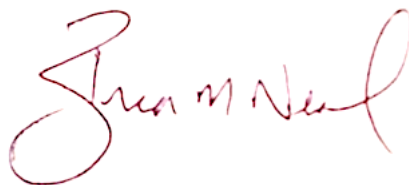
pursuant to subsections **126(1) (f), (i) and (j)** of the *Police Act*.

83. Pursuant to section 119, at a disciplinary hearing, the Member may request permission to question witnesses. Such a request must be made within 10 business days of this notification. Any such request will be directed to my attention through the Registrar.

84. Section 118(1) of the *Police Act* provides that a discipline proceeding concerning the substantiated misconduct allegations must be convened within 40 business days of notice of this decision. That date, by my calculation, is May 25, 2020.

85. A pre-hearing conference call will be convened by telephone at 9:00 am April 16, 2020 with the Member, or counsel on his behalf. At that time, dates will be canvassed that are convenient to commence the Disciplinary Hearing. The Registrar will advise the relevant parties as soon as possible of the conference call details. In the event that date is unsuitable to one or more of the parties, that party will advise the Registrar immediately and provide an indication of available dates and times for a conference call to be convened.

86. In light of the current uncertain availability of facilities to conduct a Discipline Hearing due to public health concerns, I am prepared to canvas with the relevant parties the use of video conferencing options to conduct the Discipline Hearing. I propose to review such options with the parties during the planned conference call.



Brian M. Neal, Q.C.(rt)

March 26, 2020
Victoria, B.C.

