

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367
AND
IN THE MATTER OF SERGEANT [REDACTED] [REDACTED]

NOTICE OF DISCIPLINE AUTHORITY'S DECISION

TO: Sergeant [REDACTED] [REDACTED] [REDACTED] Member
AND TO: Sergeant [REDACTED] [REDACTED] Investigator
AND TO: Mr. Clayton Pecknold Police Complaint Commissioner

Conduct giving rise to the investigation:

At about 5:15 P.M. on January 10th, 2020, Sergeant [REDACTED] attended the Oak Bay Police Detachment offices. He was not on duty at the time but he was to be [REDACTED] [REDACTED] a bit later that day and he had come to gather some materials that he would need to [REDACTED]. Fellow officers noted that [REDACTED] smelled strongly of liquor and that he was showing indicia of impairment. It was their belief that he had driven to the detachment so an impaired driving investigation was commenced. A report relating to this conduct was completed and forwarded to Crown Counsel but charges were not approved.

Steps taken under the *Police Act*:

- This incident was reported to the Office of the Police Complaint Commissioner and on January 16th, 2021 the Commissioner made an order pursuant to section 93(1)(b)(ii) of the *Police Act* that the [REDACTED] conduct be investigated externally to determine whether it constituted misconduct, specifically, *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act*. Central Saanich Police Service Professional Standards investigator, Sergeant [REDACTED] [REDACTED] was named as the investigator. Some months later the Commissioner issued a direction for additional steps and in particular asked that [REDACTED] investigate whether [REDACTED]

	<ul style="list-style-type: none"> • Might have been somewhat unsteady on his feet. Leaned on the railing of the stairs or against a wall sometimes while they were talking • Speech was slower than usual, pronunciation more deliberate. • He was highlighting sections of [REDACTED] Again, his speed and the attention the task seemed to require were a departure from what she knows to be his norm. • His vehicle as parked “cock-eyed” very close to a picnic table. • Knew that [REDACTED] took medication for [REDACTED] Wondered if they accounted for some of what she was observing. 	
Cst. [REDACTED]	<ul style="list-style-type: none"> • When walking he appeared to be thinking about his foot placement. It was a funny, purposeful walk. • Strong odor of alcohol. • His speech was “off.” • Suspected there might be [REDACTED] meds involved. • She was told he had parked near the picnic tables and says he often did that when he was just running in to get something. 	She drove him to [REDACTED] [REDACTED] Was there at 7:00 when [REDACTED] [REDACTED] Nothing “off” by that time. He appeared normal.
Cst. [REDACTED]	<ul style="list-style-type: none"> • Did not observe any signs of impairment. • Initially did not smell alcohol. • At 6:15 went out to the parking lot with [REDACTED] so he could have a smoke. 	

	<ul style="list-style-type: none"> • When near him in the stairwell noted smell of liquor. • They conversed. No slurring. • Got cigarettes from car, did not stumble, sway or fumble with keys or cigarettes 	
Cst. ██████████	<ul style="list-style-type: none"> • Strong odour of liquor • Speech a bit slow and slurry. You wouldn't have noticed it if you didn't know how he usually spoke. • His balance seemed fine. • Did not notice anything out of the ordinary in his walk. 	
Cst. ██████████	<ul style="list-style-type: none"> • Limited observation from a distance. • Noted nothing unusual. 	<ul style="list-style-type: none"> • Listened to ██████████ ██████████ • Describes it as eloquent. • ██████████ spoke very clearly.

██████████ evidence:

██████████ confirmed that he had driven to the detachment. Although he had told ██████████ on the day of the incident that he had consumed a beer while taking down his Christmas tree and then a second one about four in the afternoon after he had a nap, when he was interviewed some ten months later, he recalled only the one beer he had shortly before leaving his house. He reported that he had taken one tablet of ██████████ ██████████ and a tablet of ██████████ He takes the ██████████ daily. The ██████████ was prescribed to help him deal with ██████████ It was to be used on an “as needed” basis and because he had been warned that it could be addictive, he did not take it frequently. When he did use it, he generally took it around bedtime because it helped him sleep. On January 10th he was feeling ██████████ ██████████ that evening so had taken it earlier than usual. The dosages of these drugs that he took did not exceed that prescribed by his doctor. He said he was not warned about avoiding alcohol while taking these medications. The ██████████ did have a “do not operate heavy machinery sort of warnings.” He has noted that the ██████████ causes

drowsiness but says his reaction is generally positive. It does what it was designed to do. He has mixed these drugs with alcohol in the past and noted no adverse effects.

While he did not challenge his colleagues' observations and has accepted the fact that he was exhibiting symptoms consistent with impairment, his subjective assessment was quite different. He said, "I vividly recall sitting on the desk in the corner of the constable's area having a conversation with a whole bunch of cops, again I wouldn't have done it I'd thought I was actually impaired."

Analysis

The misconduct allegation ██████ has been investigated for is one of *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act*. That section defines Discreditable Conduct as 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. Operating a motor vehicle while impaired would generally amount to discreditable conduct but as with the *Criminal Code* Offence of Impaired Driving there is a minimal mens rea requirement. A reasonable person would not consider an officer's conduct discreditable if it were established that the consumption of the alcohol or drug was involuntary or that they could not have been expected to know the intoxicating properties of the substance being consumed.

In the present case, both the alcohol and the two drugs were consumed voluntarily. There remained, however, a question as to whether ██████ knew of or was reckless to the possibility that the drugs he was taking might cause impairment or exacerbate the effects that would ordinarily result from the consumption of alcohol. Since this issue would arise only if the symptoms ██████ exhibited could not be accounted for based on his alcohol consumption alone, ██████ retained the services of Forensic Alcohol and Drug Expert, ██████ ██████

██████ has a Masters of Science degree in Pharmacology. He has been employed as a member of the Alcohol, Drugs, and Toxicology Section of the Royal Canadian Mounted Police Forensic Laboratory for four decades. He has been accepted as an expert in this field in the Provincial Courts of British Columbia, Alberta, North West Territories and the Yukon as well as in the superior courts of British Columbia and Alberta.

He was asked to answer a number of questions relating to this misconduct investigation and provided his report on October 6th, 2020.

These were his conclusions:

- The strong smell of liquor on ██████ breath indicated that he had consumed an alcoholic beverage. One cannot determine when the beverage was consumed, how much was consumed or the possible blood alcohol concentration based on the smell of liquor on an individual's breath.
- The consumption of one beer would not give rise to the symptoms observed.
- Had ██████ consumed the two drugs he was prescribed and more than one beer, ██████ would have expected him to be exhibiting behaviour similar to that reported by the witnesses.
- Had ██████ consumed the two drugs he was prescribed and more than one beer, ██████ would NOT have expected him to be described as appearing normal 1 ½ hours after the incident.
- It was ██████ opinion that the signs and symptoms documented by ██████ fellow officers was due to the combined effect of ██████ and his medical condition.
- As part of his answer to ██████ third question, ██████ says, "From observed symptoms one cannot determine driving impairment. In these circumstances I would need a driving pattern, blood alcohol concentration, and/or SFST's (Standard Field Sobriety Tests) and a DRE (Drug Recognition Expert) evaluation to determine driving impairment.

I could certainly have benefitted from some further explanation with respect to several aspects of this report but section 117 (1)(a) sets forth the evidence a retired judge can use in the review. There is no provision to ask further questions of either a lay witness or an expert witness. Taking into account and relying on the expert report of ██████ then, I find that there is no clear, convincing and cogent evidence to support the allegation that ██████ was driving while impaired on January 10, 2020. Since that is the only basis for the single allegation of misconduct against him, I find that it is NOT SUBSTANTIATED.

Pursuant to Section 117(11) of the *Police Act*, this decision

- a. is not open to question or review by a court on any grounds, and
- b. is final and conclusive.

Dated at Surrey, British Columbia this 12th day of July, 2021

A handwritten signature in black ink, appearing to read "C. Lazar". The signature is written in a cursive, flowing style.

Hon. Carole D. Lazar, Discipline Authority