

OPCC File 2021-19515

December 10, 2021

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

AND

IN THE MATTER OF A REVIEW PURSUANT TO SECTION 117

AND

IN THE MATTER OF ALLEGATIONS OF MISCONDUCT AGAINST

DETECTIVE CONSTABLE [REDACTED]

VANCOUVER CITY POLICE

NOTICE OF ADJUDICATOR'S DECISION UPON REVIEW

- TO: Constable [REDACTED] Member
c/o Vancouver Police Department
Professional Standards Section
- AND TO: [REDACTED] Discipline Authority
c/o Vancouver Police Department
Professional Standards Section
- AND TO: [REDACTED] Investigator
c/o Vancouver Police Department
Professional Standards Section
- AND TO: Mr. Clayton Pecknold Commissioner
c/o Office of the Police Complaint Commissioner
- AND TO: His Worship Mayor Kennedy Stewart Chair
c/o Vancouver Police Board

ADJUDICATOR'S DECISION

Introduction

1. On April 15, 2021, Mr. Pecknold, the Police Complaint Commissioner received notification from the Vancouver Police Department [VPD], Professional Standards Section, regarding an incident that had occurred at 10 a.m. on April 11, 2021, involving Cst. [REDACTED] of the VPD, and Ms. [REDACTED] [REDACTED] on the northeast corner of East Hastings Street and Columbia Street in Vancouver, BC [the Incident].
2. At the time Cst. [REDACTED] was in the company of three other VPD officers who were providing an escort to City of Vancouver workers conducting sidewalk cleaning in the Downtown Eastside of Vancouver.
3. The Incident involves an interaction of approximately two and a half minutes between Ms. [REDACTED] and Cst. [REDACTED] during which Ms. [REDACTED] was video recording the presence of the police on the street in front of the Overdose Prevention Site with her cellphone. According to Cst. [REDACTED] and the other officers present, her attention was focused primarily on Cst. [REDACTED]
4. During the Incident Ms. [REDACTED] called Cst. [REDACTED] insulting names, used profanity, and made unfounded allegations about him picking on people, and about him and the police abusing women. When interviewed in the investigation Ms. [REDACTED] said Cst. [REDACTED] said to her that he was going to “smack” her if she came close to him while she was filming him with her cellphone; and that she was shocked and taken back by this. Ms. [REDACTED] took several very short, close-up videos and several photos of Cst. [REDACTED] She later had a friend post two of the videos on Twitter. Towards the end of the Incident Cst. [REDACTED] also said to her that she should “go back to dealing drugs”. Ms. [REDACTED] said this comment did not bother her as much as his earlier comment that he was going to “smack” her.

5. Officers in the Professional Standards Section became aware of the Incident after having observed videos taken by Ms. [REDACTED] that were posted on Twitter.
6. Cst. [REDACTED] account is of the Incident is different in some respects. He says that he said to Ms. [REDACTED] that he would “smack it”, meaning her cellphone out of her hand if she again came too close to him. He had asked her previously to step back, to stay on the sidewalk, and to put her mask back on her face, in which case she could video whatever she wanted. He said her mask was down such that her nose and mouth were not covered, and that on several occasions she was too close to him in terms of the two-meter social distancing limit required to prevent the spread of COVID 19. Cst. [REDACTED] said when Ms. [REDACTED] was trying to put her cell phone right in his face, she was yelling and screaming very close to him, and he could see the spit particles coming out of her mouth. When Ms. [REDACTED] approached him again, yelling and started to put her cellphone right in his face he said to her “I’m telling you, back up or I’m going to smack it”, referring to her cellphone, and he put his hand up. It was at this point that Ms. [REDACTED] said something about him and the police abusing women.
7. It is the conduct of Cst. [REDACTED] in this very brief interaction with Ms. [REDACTED] at approximately 10 a.m. on April 11, 2021, that is the subject of the order for investigation from the Office of the Police Complaint Commissioner [OPCC], issued by the Mr. Pecknold [the Commissioner] on April 19, 2021, pursuant to s. 93(1)(a) and (b)(i) of the *Police Act*, [R.S.B.C. 1996] c. 367, [the Act].
8. Sgt. [REDACTED] of the VPD Professional Standards Section was assigned to investigate this matter and he submitted his Final Investigation Report on October 19, 2021, to the Discipline Authority, Inspector [REDACTED]
9. On November 2, 2021, Inspector [REDACTED] issued his decision in this matter pursuant to s. 112 of the Act.

10. In the Notice of Appointment of Retired Judge, I am advised that Inspector █████ identified one allegation of misconduct against Cst. █████ and he determined that the allegation of “discreditable conduct” pursuant to s. 77(3)(h) of the Act did not appear to be substantiated. His reasons are not required to be provided for this review (s. 117(6)).
11. On November 24, 2021, the Commissioner issued a “Notice of Appointment of Retired Judge” naming me to conduct a s. 117 review of this matter and report within ten business days of receipt of the materials.
12. It is my responsibility to list and/or describe each allegation of misconduct that arises from the Incident without being influenced or constrained by prior determinations.

Statutory and Legal Requirements Applicable to a s. 117 Review

13. The Act has been the subject of amendment and judicial review by the courts. It is a complicated statute that attempts to integrate the interests of police officers, individual civilians, and in certain instances broader community interests, into a fair and just police complaint procedure.
14. The Act has been considered by the courts. In an often-cited decision Madam Justice Newbury J.A. for the Court of Appeal in *Florkow v. British Columbia (Police Complaints Commissioner)*, 2013 BCCA 92, summarized how the Act operates regarding complaints about police conduct:

[3] The process established by Part XI for dealing with complaints of police misconduct encompasses several stages – the investigation of a complaint by an investigating officer (“IO”); the review of the IO’s final investigative report by a “discipline authority” (“DA”) and, where the DA considers that the conduct of the police officer (“member”) constitutes misconduct, the convening of a discipline proceeding; the review of a DA’s ‘no misconduct’ determination by a retired judge (who becomes the DA) where the PCC considers the first DA’s determination to be “incorrect”; the preparation of a disposition report by the DA following a discipline proceeding, and his or her determination of appropriate disciplinary measures; and in certain circumstances, the arranging of a “review on the record” or a public hearing by an “adjudicator” (who is also a retired

judge). Where at the end of the investigative stage or at the end of a disciplinary proceeding, the decision-maker finds that the conduct complained of does not constitute misconduct, the Act generally brings the process to an end by stating that the decision is “final and conclusive” and “not open to question or review by a court of law”. An exception is made at the end of the investigative stage, however, if the PCC takes certain measures within the time limitation specified in the Act: see s. 112(5) [where the Commissioner appoints a retired judge under s. 117]. [Emphasis and last comment added.]

15. In *Florkow* (at para. 5) the issue was whether the Commissioner had a “plenary authority” to convene a public hearing at any time or stage of the complaint process. In considering that issue Madam Justice Newbury commented (at para. 6):

Part XI of the Act is dense, complicated and often confusing. Its provisions are hedged round with exceptions, qualifications and limitations that are often located in other sections not in close proximity. One must frequently follow cross-references to other sections, and few provisions can be said to stand alone. It is not a model of clarity. [Emphasis added.]

16. Section 117(1) gives the Commissioner the authority to appoint a retired judge to review the decision of a disciplinary authority when the Commissioner considers that there is a reasonable basis that the disciplinary authority’s decision is incorrect in terms of a finding that the member or former members conduct did not constitute misconduct. Section 117(1) also sets out the task for the reviewing retired judge as follows:

- (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. [Emphasis added.]

17. Section 117(9), referred to immediately above (at s. 117(1)(c)), is engaged if, on review, the retired judge considers the police conduct at issue “appears to constitute misconduct”. If this occurs:

[...] the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless s. 120(16) [a prehearing conference] applies. [Emphasis added.]

18. On the other hand, if the retired judge on review decides that the conduct of the member or former member does not constitute misconduct (s.117(10)), the retired judge must include that decision, with reasons, in the notification required under s. 117(7) to the listed individuals.

19. Section 117(8) mainly deals with what the notification referred to in s. 117(7) must contain. First, it specifies the required ingredients of notice for any s. 117 review carried out by a retired judge:

- (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...

20. Further, if the retired judge does not make a finding different from the discipline authority's finding of no misconduct, then pursuant to s. 117(11) the decision of the retired judge "(a) is not open to question or review by a court on any ground, and (b) is final and conclusive." Section 117(8)(e) requires the retired judge to include such a finding in the notification.

21. If the retired judge decides that he or she is unable to agree with the finding of the discipline authority's finding of no misconduct, and considers the police conduct at issue to constitute apparent misconduct, s. 117(8)(d) contains the test to be applied in reaching such a determination. It requires the retired judge to include in the notification their determination as to the following:

- (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 require 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...[Emphasis added.]

22. Thus, as specified in s. 117(8), the test to be applied by the retired judge to the evidence is whether it “appears sufficient to substantiate the allegation of misconduct and require[s] the taking of disciplinary or corrective measures”. The making of such a finding places the retired judge in the role of disciplinary authority.

23. This articulation, when contrasted to the task for the retired judge on review that he or she make their “own decision” on the matter (s. 117(1)(b)) has caused some confusion.

24. In *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970, [Scott], Mr. Justice Affleck addressed this issue (at para. 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.

25. In *Scott* the woman who had complained about the conduct of the police officer had been tried and acquitted of two criminal charges in relation to the police removing her granddaughter from her care in her home: assaulting a peace officer, and willfully resisting or obstructing a peace officer in the execution of his duty. Included in the reasons of the retired judge conducting a s. 117 review was consideration of the risk of inconsistent results flowing from the provincial court trial of the complainant and the police complaint process focused on the conduct of the arresting police officer. In addition, the retired judge found the police officer’s conduct to be “a marked and serious departure from the standard reasonably to be expected of a police officer”; and he engaged in an

analysis of whether the police officer had acted in good faith and found good faith to be lacking (from the retired judge's decision as quoted by Affleck J. in *Scott*, at para. 23).

26. Mr. Justice Affleck concluded that (at para. 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.

27. The Court concluded in *Scott* (at para. 41) that the retired judge was disqualified from serving as the disciplinary authority pursuant to the *Act*, finding that the apprehension of bias was so apparent that the petitioner could not "reasonably have any confidence he [would] receive a fair hearing."

28. Therefore, while s. 117(1)(b) directs a retired judge to come to their own decision, it is incorrect to stray into a conclusive analysis of the evidence should he or she be inclined to find that it appears to be sufficient to substantiate the allegations made. This is because the review in the case of apparent police misconduct is preliminary to the later hearing that may occur, with the retired judge becoming the discipline authority.

Evidence and Materials Considered

29. I have reviewed and carefully considered all the evidence provided to me by the Commissioner pursuant to s. 117(6) of the *Act*. It is comprised of the Final Investigation Report prepared by Sgt. [REDACTED] with his analysis and assessment and has a number of attachments. The attachments include the procedural reports, witness interview transcripts and audio of interviews with: Cst. [REDACTED] Cst. [REDACTED] Cst. [REDACTED] Cst. [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] an employee of the City of Vancouver, interview summaries and the police officers' notes. The Final Investigation Report also has attached the OPCC orders, notices, and progress reports, and the Order of the Provincial Health Officer regarding "Gatherings and Events – March 31, 2021".

30. I have viewed the photographs and video footage contained in the Final Investigation Report. They include nine photos and six videos emailed to the VPD Forensic Video Unit by Ms. [REDACTED]. The photos sent by Ms. [REDACTED] included several photos of VPD officers at the intersection of Columbia and East Hastings Street, with the remainder apparently unrelated to the Incident. The six videos taken by Ms. [REDACTED] cellphone capture different parts of the interaction between herself and Cst. [REDACTED] with two of the videos being segments of one of the other videos. Two of these videos were posted on Twitter, by a friend of Ms. [REDACTED] a friend of Ms. [REDACTED] accompanied by Tweets critical of the VPD's policy in relation to addicted persons. I have also considered the summary of these videos by Sgt. [REDACTED] which is accurate.
31. I have also viewed footage from a video (without sound) obtained by the police from a security camera in the neighbourhood with a view of the scene and the Incident from a vantage point in the 100 block of East Hastings Street, which shows the scene and the Incident at a distance.
32. Finally, in conducting my review I have considered the Notice of Appointment of Retired Judge [the Notice] dated November 24, 2021, the relevant caselaw and statutory authority.

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

33. In the Notice the Commissioner referred to the decision of the Discipline Authority (Inspector [REDACTED] dated November 2, 2021, as follows (at p. 2):

Having reviewed the evidence the Discipline Authority determined, “that the evidence is sufficiently clear, convincing and cogent to establish on a balance of probabilities that Constable [REDACTED] did not commit the misconduct of *Discreditable Conduct*.” In his decision the Discipline Authority found that the Member “could have responded in a better manner during his interaction with Ms. [REDACTED] but nevertheless noted that he was “not examining his conduct against a standard of perfection.”

In reviewing the evidence, the Discipline Authority observed that Ms. [REDACTED] was provoking the Member to respond, in particular by getting physically close to him

with her phone. Further, the Discipline Authority noted that the Member did respond at one point by saying that he would “smack the phone” that Ms. █████ had close to his face and also later saying, “I have no idea, what you’re talking about, no idea, no idea ma’am, go back to dealing drugs, see ya.” The Discipline Authority concluded that as much as the Member did not need to say these words, it was in response to Ms. █████ provoking the Member, however, he was “satisfied that Constable █████ responses did not reach the level required to become a misconduct, in particular *Discreditable Conduct*.”

34. The Commissioner then set out his view of the matter (at pp. 2-3 of the Notice):

After review of the Discipline Authority’s decision, I am of the view that the Discipline Authority has not properly considered the context of the available evidence in his assessment and decision. I have [a] reasonable basis to conclude that the Discipline Authority’s decision is therefore incorrect.

The Discipline Authority’s decision and analysis of the evidence is insufficient. In particular, the Discipline Authority found some divergence in evidence between the statements of Ms. █████ and the Member. The Discipline Authority concluded that the Member’s version should be given the benefit of the doubt. However, in reviewing the statements and the video evidence in the Final Investigation Report, I am of the view that there is evidence to support Ms. █████ version of events.

In addition, it is my view that the Discipline Authority is incorrect when he determined that the Member did not commit *Discreditable Conduct*. Specifically, the Discipline Authority failed to properly consider the available evidence as against the expectations of a reasonable member of the community. The public expects that officers remain calm and professional in all circumstances including cases such as this. The video supports that the Member made a threat of physical violence towards Ms. █████ and when viewed in all of the circumstances this response and overall behaviour can reasonably be seen to fall below that expected of a Member.

35. The conduct of concern arises from the interaction between Cst. █████ and Ms. █████ During his contact, it is alleged by Ms. █████ that Cst. █████ said words to

the effect of “I will smack you”, which allegedly could amount to a threat of physical violence. Aspects of Cst. ██████ overall demeanour and subsequent comments, including his comment “I have no idea what you are talking about, no idea, no idea ma’am, go back to dealing drugs, see ya”, are also conduct of concern. In short, a substantial portion of Cst. ██████ comments and behaviour in relation to Ms. ██████ merit careful scrutiny in this review.

Section 117(8)(b) – Statement of the Complainant’s Right to Make Submissions

36. As this investigation was ordered by the Commissioner pursuant to s. 93(1) of the Act this requirement has no application. Although Ms. ██████ was interviewed by the Investigator, she did not file a complaint with the OPCC.

Section 117(8)(c) – Description of the Allegations of Misconduct Considered

37. Having reviewed the evidence contained in the Final Investigation Report I identify the following allegations of misconduct against Cst. ██████ that could appear to be substantiated:

- i. Discreditable Conduct while on duty by conducting himself in a manner that he knew or ought to have known would be likely to bring discredit on the Vancouver Police Department by his conduct and comments in relation to Ms. ██████ including but not limited to allegedly uttering a verbal threat to Ms. ██████ pursuant to s. 77(3)(h) of the Act;
- ii. Discourtesy by failing to behave with the courtesy due in the circumstances towards Ms. ██████ a member of the public, in the performance of his duties pursuant to s. 77(3)(g) of the Act.

38. I am mindful that conduct described in the subparagraphs of s. 77(3), described as “a disciplinary breach of trust” includes the two allegations referred to above, and hence s. 77(4) has application here. It states that “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) – Whether or Not the Evidence Referenced in the Final Investigation Report Appears Sufficient to Substantiate the Allegations

The Evidence

39. On the evidence there is only one key disputed fact here, and that is whether Cst. [REDACTED] said to Ms. [REDACTED] “I will smack it” or “I will smack you” when she came close to him with her cellphone held up near him, and he held up his hand. Otherwise, the overall nature of their interaction during the Incident appears to be generally consistent as between witnesses and the available video evidence.

40. I note Cst. [REDACTED] does not dispute the other comment he made to Ms. [REDACTED] in which he suggested she go back to dealing drugs. To the contrary, he provided an explanation as to why he made it, which was that he had arrested workers from the Overdose Prevention Site [“OPS”], [REDACTED] [REDACTED] who had actively trafficked drugs in the area to people who then consumed the drugs at the OPS.

41. It is, however, necessary to provide some further detail to provide a context for the interaction between Cst. [REDACTED] and Ms. [REDACTED]. To do this I have drawn from the General Occurrence Report with a synopsis and narratives authored by Cst. [REDACTED] and Cst. [REDACTED] and to a lesser extent from the narratives of Cst. [REDACTED] and Cst. [REDACTED]. I will briefly refer to the evidence of Mr. [REDACTED] a City of Vancouver employee. Then I will review the evidence of Ms. [REDACTED] as provided to Sgt. [REDACTED] in a recorded interview. Lastly, I will set out the contents of the several photos and the short videos taken by Ms. [REDACTED] on her cellphone, and the street surveillance camera video footage of the Incident.

i. Accounts of Cst. [REDACTED] and Cst. [REDACTED]

42. On April 11, 2021, Cst. [REDACTED] was working with his partner Cst. [REDACTED]. At 9:00 a.m. Cst. [REDACTED] and Cst. [REDACTED] met up with Cst. [REDACTED] and Cst. [REDACTED] in the Unit block of East Hastings Street. Their primary duty was to escort the City of Vancouver workers as they conducted sidewalk cleaning. Just after 10 a.m. the four officers were walking west on the north side of the 100 block of East Hastings as five or six city workers cleaned the sidewalks. The officers stopped on the sidewalk at the northeast corner of East Hastings and Columbia Streets

waiting for a pedestrian light to cross westbound. Located at that corner at 390 Columbia Street is the Overdose Prevention Site.

43. Cst. [REDACTED] observed a female standing on the northwest corner of East Hastings Street and Columbia Street. The female was holding her phone up and she appeared to be taking pictures or video of the police and the city crew. As the officers waited, the female walked east on Hastings Street against the no walk signal. As the female got closer to Cst. [REDACTED] he recognized her as [REDACTED] with whom he had cordial dealings in the past.
44. Cst. [REDACTED] then asked Ms. [REDACTED] if she would like to take a picture of "us", referring to the police as she had posed for pictures with Cst. [REDACTED] in the past. Ms. [REDACTED] immediately took offence and started to yell at Cst. [REDACTED] calling him a "fuckin dick" and a "pig". Cst. [REDACTED] asked Ms. [REDACTED] why she was so upset, and she told him that he needed "to go die" and to "suck dick".
45. At that point Ms. [REDACTED] was standing in the middle of the roadway. She continued to yell at Cst. [REDACTED] and question why the police were in the block. As she continued to yell and swear, Ms. [REDACTED] took off her facemask and moved towards Cst. [REDACTED]. He could see spit particles coming out of her mouth. Cst. [REDACTED] told her that she needed to keep her mask on and keep a six-foot distance to obey the public health orders. Ms. [REDACTED] was not physically distancing from Cst. [REDACTED] and did not have her mask on her face. Cst. [REDACTED] understood the health orders at that time required people to socially distance, keeping a distance of at least two meters unless they were masked, regardless of whether they were indoors or outdoors. Ms. [REDACTED] did not put her mask on her face. She just adjusted it to her chin and continued to call Cst. [REDACTED] a "fuckin dick" and to question why police were present. Cst. [REDACTED] told [REDACTED] that if she did not get off the road and did not put up her mask, that he was going to give her a ticket and become a "big dick". Ms. [REDACTED] then moved off the roadway to the sidewalk and pulled out her phone. She moved to within a foot of Cst. [REDACTED] and put her phone in his face. He told her to back up and that she

could take pictures/videos of him from afar, but if she put her phone in his face again, he would smack it out of her hand. Ms. [REDACTED] then once again put her phone within a foot of Cst. [REDACTED] face. He motioned his hand towards her phone as if he was going to smack it out of her hands. Ms. [REDACTED] immediately backed off. She then kept her phone pointed at Cst. [REDACTED] from three to four feet away and started to ask questions about police abusing women. Cst. [REDACTED] replied, "I have no idea what you are talking about ma'am, why don't you go back to dealing drugs".

46. Cst. [REDACTED] indicated that he saw Ms. [REDACTED] later that day in the Unit block of East Hastings Street. Ms. [REDACTED] was walking two dogs on leashes and as she passed by Cst. [REDACTED] and the other three constables, she said "Hi". Cst. [REDACTED] replied by saying "Hi [REDACTED] I hope you are having a better day now" to which she nodded her head as she walked past.
47. Cst. [REDACTED] recalled observing a female, later identified as [REDACTED] standing in the middle of Columbia Street against the pedestrian light yelling at Cst. [REDACTED]. Ms. [REDACTED] had her cellphone out and was yelling that Cst. [REDACTED] was a "dick". Cst. [REDACTED] also heard [REDACTED] yelling that the police should not be in the block. Cst. [REDACTED] was of the view that Ms. [REDACTED] seemed to be unaware or indifferent to the fact that the constables were accompanying a group of five or six city workers who were wearing bright yellow overalls, carrying rakes, and operating a street sweeping vehicle on the sidewalk.
48. Cst. [REDACTED] said that Ms. [REDACTED] continued towards police without her facemask properly positioned on her face. Cst. [REDACTED] heard Cst. [REDACTED] tell Ms. [REDACTED] that she needed to put her mask on properly and to stay six feet away from him because of the current health orders. Ms. [REDACTED] ignored Cst. [REDACTED] statement. Ms. [REDACTED] disregarded Cst. [REDACTED] telling her several times to stay six feet away from him. She continued to yell, swear, and film him while standing less than six feet away from him. Cst. [REDACTED] said that Ms. [REDACTED] held her cellphone right in Cst. [REDACTED] face and Cst. [REDACTED] heard Cst. [REDACTED] say something along the lines

of you need to stay six feet away from me or I'm going to smack your phone out of your hand. Cst. [REDACTED] could not recall his exact words. Cst. [REDACTED] said that [REDACTED] told Cst. [REDACTED] numerous times to "suck a dick". At one point, Cst. [REDACTED] told Ms. [REDACTED] that she needed to put on her mask, or he would issue her a ticket. Ms. [REDACTED] eventually left the roadway and stood on the sidewalk very close to Cst. [REDACTED] and Cst. [REDACTED] while she continued to film Cst. [REDACTED]. Cst. [REDACTED] also heard Ms. [REDACTED] make a statement about police abusing women. Cst. [REDACTED] said that Ms. [REDACTED] initiated the interaction with Cst. [REDACTED] and at the time Cst. [REDACTED] had no idea who Ms. [REDACTED] was. Cst. [REDACTED] believed that Ms. [REDACTED] was deliberately trying to instigate a response from Cst. [REDACTED] so she could have it on film. She considered Ms. [REDACTED] to be very belligerent. Cst. [REDACTED] said that [REDACTED] did not speak to any police members other than Cst. [REDACTED] and that she considered Ms. [REDACTED] statement regarding the police abusing women to be nonsensical in the context of the conversation and situation. Cst. [REDACTED] stated that Cst. [REDACTED] behaviour was calm, but she could tell that he was getting irritated by Ms. [REDACTED] because she seemed to be trying to instigate something. Cst. [REDACTED] considered that Ms. [REDACTED] made quite an aggressive motion toward Cst. [REDACTED] face, deliberately trying to instigate a response from him. Cst. [REDACTED] said that Cst. [REDACTED] never yelled at Ms. [REDACTED] and she did not believe that he ever swore at her or even raised his voice. He just told her that she needed to stay six feet away from him. It was after Cst. [REDACTED] had been dealing with [REDACTED] for a few minutes that he told her she needed to back up or he was going to smack her phone out of her hand.

49. Cst. [REDACTED] recalled that the four officers met Ms. [REDACTED] later the same day without any further difficulties.

ii. Accounts of Cst. [REDACTED] and Cst. [REDACTED]

50. Cst. [REDACTED] was working in full uniform as Cst. [REDACTED] partner on this day. They were accompanying a sanitation crew through the Downtown Eastside so that

they could clean the parks and streets. He noticed a female standing on the northwest corner of Columbia and East Hastings Streets who appeared to be holding her phone horizontally, such that she might be taking a video. He had not seen this woman before. He acknowledged her by waving at her and told the other officers they may be being videotaped. The female jaywalked towards the officers, crossing from the northwest corner towards the northeast corner of the intersection. He recalled that the female later known to him as Ms. [REDACTED] immediately started a verbal confrontation specifically with Cst. [REDACTED] and not with any of the other officers. While she was standing in the number two lane of Columbia Street Cst. [REDACTED] heard Ms. [REDACTED] make an unprovoked comment - something along the lines of you are a woman beater or you beat women. Cst. [REDACTED] did not consider the female to be much of a risk to office safety, but he believed that she may have been trying to provoke a reaction from the police officers. He decided not to interact with her "in an attempt not to add any fuel to the fire." Cst. [REDACTED] did hear Cst. [REDACTED] say to Ms. [REDACTED] "Get off the street or I will give you a ticket." When the City of Vancouver employees began crossing Columbia Street to the west, he escorted them across the street as that was his duty for the day, rather than getting into an argument with Ms. [REDACTED] Cst. [REDACTED] did not hear any other conversation between Cst. [REDACTED] and Ms. [REDACTED] once he had crossed the street. He regarded Ms. [REDACTED] to be very confrontational, without provocation. It seemed to him that she had made up her mind from across the street that she was going to come over and initiate an interaction with the police and try to force a reaction. Cst. [REDACTED] thought that Cst. [REDACTED] seemed taken back by the start of the interaction. Cst. [REDACTED] did not regard Cst. [REDACTED] as defending himself, but he was holding his position with Ms. [REDACTED] He recalled that Ms. [REDACTED] was face to face with Cst. [REDACTED] when she took video of Cst. [REDACTED] and he could not recall if she was wearing a mask or any personal protective equipment.

51. Cst. [REDACTED] was working with Cst. [REDACTED] on this day and they were also with Cst. [REDACTED] and Cst. [REDACTED] all standing on the northeast corner of Columbia Street

and East Hastings Street. Cst. [REDACTED] heard Cst. [REDACTED] yell across the street something to the effect of “we can pose for you.” Once the pedestrian crosswalk sign changed the people on the northwest corner began crossing the street. He heard Cst. [REDACTED] again say to the female that they could have posed for her. Cst. [REDACTED] referred to the female as “[REDACTED]” and “Ms. [REDACTED]” Cst. [REDACTED] knows [REDACTED] to be [REDACTED] but he had no prior dealings with her and did not recognize her. He recalled that Ms. [REDACTED] told Cst. [REDACTED] that he did not have to be a dick, and that Cst. [REDACTED] referred to himself as “big dick” in speaking with Ms. [REDACTED] Cst. [REDACTED] observed Ms. [REDACTED] pull out her cellphone and began filming or photographing Cst. [REDACTED] Once the pedestrian crosswalk light changed Cst. [REDACTED] crossed Columbia Street to the west with the City of Vancouver workers, while Cst. [REDACTED] and Ms. [REDACTED] remained on the northeast corner of the intersection. Once he had crossed the street Cst. [REDACTED] could not hear any of their conversation.

52. Cst. [REDACTED] indicated that Cst. [REDACTED] had initiated the interaction with Ms. [REDACTED] when Cst. [REDACTED] said something to the effect that we could have posed for you. He said that Cst. [REDACTED] spoke in a joking manner and did not appear to be overly hostile in any way. He recalled that once Ms. [REDACTED] had crossed the street and pulled her camera out she had it quite close to Cst. [REDACTED] within an arm’s length and that she was quite close to him. He could not recall if [REDACTED] was wearing a mask or any personal protective equipment.

iii. *Account of Mr. [REDACTED], City of Vancouver – [REDACTED]*

53. Mr. [REDACTED] described how he and the other members of the team were doing their regular clean up of East Hastings Street. As they were approaching Columbia Street Ms. [REDACTED] started speaking to Cst. [REDACTED] Mr. [REDACTED] kept walking and doing their regular business of cleaning the street. As he walked off, he heard some words exchanged between Cst. [REDACTED] and Ms. [REDACTED] He was not clear on what was said but towards the end he heard Cst. [REDACTED] say “go back to selling your drugs.”

54. At this point the [REDACTED] and the VPD officers turned and walked away westbound. He recalled that the interactions between Ms. [REDACTED] and Cst. [REDACTED] occurred as they were walking by Ms. [REDACTED] and Ms. [REDACTED] caught her opportunity to go and share a few words with Cst. [REDACTED] and get his reaction. Before this the [REDACTED] and the VPD members were just walking normally. The VPD members were just keeping an eye on the [REDACTED] [REDACTED] Mr. [REDACTED] said that he did not realize anything had occurred until he saw the news approximately two days later.

55. Other than the one comment by Cst. [REDACTED] about going back to selling drugs, Mr. [REDACTED] did not hear or see anything else regarding the interaction between Cst. [REDACTED] and Ms. [REDACTED]. He thought that Ms. [REDACTED] had initiated the interaction. He did not think she was being hostile, and he did not hear any aggression, but he was just passing by and wasn't paying attention to everything she was saying. He believed that Cst. [REDACTED] tried to pay attention to what Ms. [REDACTED] was saying, and when Cst. [REDACTED] realized it wasn't a positive interaction that was when the interaction went "a bit weird". However, Mr. [REDACTED] thought that Cst. [REDACTED] demeanour was normal throughout the day. There was no aggression or anything that Mr. [REDACTED] saw. Mr. [REDACTED] said that Ms. [REDACTED] was probably within six feet or so of Cst. [REDACTED]. He could not recall if she was wearing a mask or any personal protective equipment.

iv. Account of Ms. [REDACTED]

56. Ms. [REDACTED] was interviewed on May 12, 2021, regarding the Incident on April 11, 2021. [REDACTED]

[REDACTED] The OPS has hundreds of people attending daily. A few days prior to April 11, 2021, Ms. [REDACTED] had witnessed a police officer taking someone's drugs from them right before they were going to go into the OPS to use them.

57. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

58. On April 11, 2021, one VPD officer whose name or badge number Ms. [REDACTED] couldn't remember, later identified as Cst. [REDACTED] started saying some things like her name and dancing around. Cst. [REDACTED] said to take a group picture and started posing a bit. Ms. [REDACTED] found this really offensive because she's allowed to take photos and video. Ms. [REDACTED] then stopped and walked across the street.

59. Ms. [REDACTED] thinks she said a few things to Cst. [REDACTED] which included calling him a couple of names, but she couldn't remember exactly what she had said. Ms. [REDACTED] said she was angry with the situation and a bit shocked.

60. Ms. [REDACTED] began filming and thought she started taking photos before she got onto the curb because Cst. [REDACTED] was saying things to her as she walked towards him, and Ms. [REDACTED] was saying things back. Then Cst. [REDACTED] said something that wasn't captured in the videos, but it was to the effect that you're off the curb, you can get a ticket, or that's illegal, or something like that. Ms. [REDACTED] could not remember exactly what Cst. [REDACTED] had said, but she felt like it was antagonistic, so she started filming.

61. Ms. [REDACTED] was really upset and thought Cst. [REDACTED] was unprofessional. The part that really upset her was when she had the camera up and the video captured Cst. [REDACTED] saying "I'm going to smack you", and Cst. [REDACTED] kind-of lunged forward, and it really freaked her out and she said her stomach kind-of turned. Ms. [REDACTED] didn't know whether Cst. [REDACTED] was going to smack her or not, and she felt that the conversation they were having should not have led up to that.

62. Ms. [REDACTED] advised that in one of the videos Cst. [REDACTED] is pointing down and telling her that she wasn't obeying the law or whatever. Ms. [REDACTED] felt that it was unprofessional for Cst. [REDACTED] to be dancing around, but the main thing that freaked her out was Cst. [REDACTED] lunge towards her and she didn't know if he was going to hit her or not. Ms. [REDACTED] found it troublesome that Cst. [REDACTED] said that to her and giggled about it afterwards. Ms. [REDACTED] was more upset about the smacking comment than being called a drug dealer.
63. Ms. [REDACTED] admitted to engaging Cst. [REDACTED] in the beginning of the interaction when she took a picture of him. Ms. [REDACTED] said she did call Cst. [REDACTED] some names, but Cst. [REDACTED] was calling out her name. It was a bit of a back-and-forth situation until the "smack me" part. She also admitted to calling Cst. [REDACTED] "a jerk" and "an asshole" or something like that. She said she did call Cst. [REDACTED] "a dick" but didn't call him "a pig". She denied saying to Cst. [REDACTED] that he needed "to go die" and "suck dick" during the interaction. Ms. [REDACTED] thought that Cst. [REDACTED] could have just ignored it, the whole thing, and done his own thing, and understood that she had the right to take a picture. Ms. [REDACTED] believes that she was approximately 3 feet away from Cst. [REDACTED] at the closest point during the interaction.
64. Ms. [REDACTED] confirmed that the videos she emailed to Sgt. [REDACTED] captured her interaction with VPD officer Cst. [REDACTED] on April 11, 2021, and that they were all the videos and photographs she had of the Incident. She also confirmed that the female voice captured in the videos was her voice, and that she had filmed the videos using her cellphone.
65. Ms. [REDACTED] could not remember if she was wearing any personal protective equipment, such as a mask or face shield during the interaction with Cst. [REDACTED] but admitted that possibly she was not wearing any personal protective equipment.

v. Ms. [REDACTED] *Cellphone Videos and Still Photos*

66. There are six short videos taken during the Incident provided to the VPD by Ms.

[REDACTED] The first four (IMG 0013, IMG 0014, IMG 0015, and IMG 0016) are each different and the last two (IMG 0017 and IMG 0018) duplicate portions of IMG 0016. Below are the summaries of the video clips provided by Sgt. [REDACTED] which appear to be accurate. I have viewed these video clips, some of them multiple times.

67. From the still photos provided to the VPD by Ms. [REDACTED] two of them depict Cst. [REDACTED] standing with Cst. [REDACTED] at the corner. Both officers are in uniform and wearing masks. Another photo depicts only the upper uniformed torso of an officer in VPD uniform that appears to be a still shot taken from a video, which is likely Cst. [REDACTED]

68. Video clip IMG 0013 is three seconds long. It shows Cst. [REDACTED] standing on the northeast corner of Columbia Street and East Hastings Street. Ms. [REDACTED] although not shown in the clip, was obviously standing near him. Cst. [REDACTED] is in full uniform wearing a black facemask covering his mouth and nose. Ms. [REDACTED] took the video using her cell phone, but she is not captured in the video footage. In it Cst. [REDACTED] says something unintelligible followed by either "I'll smack you" or "I'll smack it", "Hey", and then Cst. [REDACTED] moves his hand to block the video of Ms. [REDACTED] and then says "Oooohh" as he lowers his hand. Ms. [REDACTED] says, "Why'd you do, why" and video ends.

69. Video clip IMG 0014 is one second long. It shows Cst. [REDACTED] standing on the northeast corner of Columbia Street and East Hastings Street. Ms. [REDACTED] took the video using her cell phone, but she is not captured in the video footage. Given the close-up view of Cst. [REDACTED] Ms. [REDACTED] was standing close to him. Cst. [REDACTED] is in full uniform wearing a black facemask covering his mouth and

nose. In the video Ms. [REDACTED] says "Can you show me a", followed by Cst. [REDACTED] who says, "See that" and the video ends.

70. Video clip IMG 0015 is four seconds long. Ms. [REDACTED] took the video using her cell phone, but she is not captured in the video footage. It shows Cst. [REDACTED] standing on the northeast corner of Columbia Street and East Hastings Street. From the close-up view of Cst. [REDACTED] Ms. [REDACTED] standing close to him. Cst. [REDACTED] is in full uniform wearing a black facemask covering his mouth and nose. In the video Cst. [REDACTED] says, "Bye". Ms. [REDACTED] says, "You're a fucking dick. You're a dick" to which Cst. [REDACTED] says, "Thank you ma'am" and the video ends.

71. Video clip IMG 0016 is 46 seconds long. The video shows Cst. [REDACTED] standing on the northeast corner of Columbia Street and East Hastings Street. Cst. [REDACTED] is in full uniform wearing a black facemask covering his mouth and nose. Ms. [REDACTED] took the video using her cell phone, but she is not captured in the video footage. Again, it was taken from a short distance away. It starts with Ms. [REDACTED] saying, "Picking on women" and Cst. [REDACTED] saying "Thank you ma'am". Ms. [REDACTED] says, "Where do you get off picking on women?" Cst. [REDACTED] says, "Um ma'am. You were breaking the bylaws." Ms. [REDACTED] says, "Where do you, where do you get off picking on women?" to which Cst. [REDACTED] says, "I have no idea what you're talking about, no idea." Ms. [REDACTED] says, "Yeah of course, of course". Cst. [REDACTED] says, "No idea ma'am. Go back to dealing drugs, see ya". Cst. [REDACTED] then walks westbound on the sidewalk up to Columbia Street. Ms. [REDACTED] says, "Go on, go on". Cst. [REDACTED] says, "Go on where". Ms. [REDACTED] says, "Go on, go on". Cst. [REDACTED] says, "I obey, I obey the signs" while pointing with his left hand towards the pedestrian crossing sign on the northwest corner of Columbia Street and East Hastings Street. Ms. [REDACTED] says, "Yeah go". Cst. [REDACTED] says, "See that", while pointing with his left hand towards the pedestrian crossing sign on the northwest corner of Columbia Street and East Hastings Street. Ms. [REDACTED] says, "Go that way then". Cst. [REDACTED] says, "Take a, take your phone, put it up there" while pointing at the pedestrian crossing sign. "I obey the signs. Unlike you. There's rules and regulations for people, which obviously you don't like to

follow.” Ms. [REDACTED] says, “Oh you’re taught huh”. Cst. [REDACTED] says, “Just because you’re [REDACTED] doesn’t mean you can do whatever you want, ok. Calm down now”. Ms. [REDACTED] says, “Go on.” Cst. [REDACTED] says, “Go where?” Ms. [REDACTED] says, “Go back to abusing people. Go on”. Cst. [REDACTED] says, “Nobody’s abusing anyone [REDACTED] Ms. [REDACTED] says, “Yeah, you’re abusing people. You’re an abuser.” Cst. [REDACTED] says, “Bye [REDACTED] have a good day [REDACTED] Cst. [REDACTED] and Cst. [REDACTED] then walked westbound and began crossing Columbia Street towards the northwest intersection of Columbia Street and East Hastings Street where Cst. [REDACTED] and Cst. [REDACTED] were standing. Ms. [REDACTED] says, “Yeah bye”, and the video ends.

vi. *Street Security Video*

72. A canvas of video cameras in the vicinity of the Incident located one video camera located at 101 East Hastings Street. The video camera faced west and was located less than one quarter block east of Columbia Street on the north side of East Hastings Street. The video captured the north sidewalk of the 100 block of East Hastings Street as well as the north sidewalk of the Unit block of East Hastings Street. The video had no audio. The video shows the following as accurately set out by Sgt. [REDACTED]

At 9:59:00 a.m. the city sanitation crew along with VPD Constables [REDACTED] [REDACTED] and [REDACTED] walked westbound on the north sidewalk of East Hastings up to the northeast corner of East Hastings Street and Columbia Street. The VPD officers were dressed in full uniform and the city sanitation workers were wearing either orange coveralls or reflective high visibility vests.

At 10:00:15 a.m., Ms. [REDACTED] walked eastbound on the north sidewalk of East Hastings Street up to the northwest corner of East Hastings Street and Columbia Street. Ms. [REDACTED] was wearing a black hoody, black shorts, white shoes and carrying a white shoulder bag across the front of her chest.

At 10:00:15 a.m., Ms. [REDACTED] appears to produce a cell phone and possibly takes a picture or video in the direction of the VPD officers.

At 10:00:30 a.m., Ms. [REDACTED] attempts to cross Columbia Street eastbound contrary to the pedestrian signage at the time. Cst. [REDACTED] appears to say something to Ms. [REDACTED] when she began crossing the street contrary to the pedestrian crossing sign. Ms. [REDACTED] returned to the northwest corner of the intersection and crossed Columbia Street moments later when the pedestrian signage indicated it was appropriate to cross the street.

At 10:00:46 a.m., Ms. [REDACTED] crossed Columbia Street and stood within approximately 3 to 5 feet of the four VPD constables. Ms. [REDACTED] does not appear to be wearing a facemask over her nose and mouth.

From 10:00:46 a.m. until 10:02:49 a.m. Cst. [REDACTED] and Ms. [REDACTED] appear to have a conversation within approximately three feet of each other. At no point during the interaction between Cst. [REDACTED] and Ms. [REDACTED] did Cst. [REDACTED] lunge towards Ms. [REDACTED]. The video does not capture Cst. [REDACTED] placing his hand in front of Ms. [REDACTED] cell phone. However, from 10:01:41 a.m. until 10:01:58 a.m. the East Hastings Street door to the Overdose Prevention Site at 390 Columbia Street was ajar and blocked the video footage of Ms. [REDACTED] and the right half of Cst. [REDACTED] body.

At 10:01:08 a.m. Ms. [REDACTED] appears to pull up a facemask over her face from her throat area.

At 10:02:17 a.m. Cst. [REDACTED] and Cst. [REDACTED] cross Columbia Street to the west in company of the part of the city sanitation crew while Cst. [REDACTED] and Cst. [REDACTED] remain on the Northeast corner, with Cst. [REDACTED] still engaging in conversation with Ms. [REDACTED]. Ms. [REDACTED] appears to have a cell phone in her hand; however, it is difficult to confirm due to distance and clarity of the video.

At 10:02:49 a.m. Cst. [REDACTED] and Cst. [REDACTED] cross Columbia Street to the west.

At 10:02:58 a.m. [REDACTED]
[REDACTED]

At 10:03:00 a.m., the VPD constables and city sanitation crew continue westbound on the north sidewalk of the Unit block of East Hastings Street.

Analysis of the Evidence Regarding the Allegations

73. The evidence of witnesses to the Incident, including its participants Cst. [REDACTED] and Ms. [REDACTED] combined with the short video clips provided by Ms. [REDACTED] and the footage from a nearby security camera showing the Incident at a distance, provide a reasonably fulsome picture of what appears to have occurred:

- Ms. [REDACTED] and Cst. [REDACTED] in his role as a police officer, had previously had amicable dealings, which seem to have included the taking of photos.
- On this occasion Ms. [REDACTED] was filming the police presence initially from across the street because she documented, from time-to-time, police around the OPS, something she considered detrimental to drug users attending at the OPS. She was upset by the police at the corner where the OPS was located. [REDACTED]
[REDACTED].
- She initially started to jay walk towards the officers but was discouraged from doing so by Cst. [REDACTED]. She waited to cross the street, at least partially, until the pedestrian light permitted it.
- She appeared to continue to take video or photos of the police from the roadway.
- Ms. [REDACTED] seemed not to associate the police presence with the City's street-cleaning crew.
- The sole focus of her attention and her use of profanity was Cst. [REDACTED].
- Initially Cst. [REDACTED] may have engaged with her in a jovial way, but when it became clear to him that she was very angry, he was taken back.
- Although she had a mask, she was not wearing it over her nose and mouth. She continued to shout at Cst. [REDACTED] apparently while filming him, and did not obey his directions to her that she keep a safe distance from him in light of the COVID 19 health requirements.
- Cst. [REDACTED] became concerned about how close Ms. [REDACTED] was to him given that she did not have her mask over her mouth and nose, was shouting, and he could see particle of spit coming from her mouth.

- Cst. [REDACTED] then had to assert the two meter/six foot social distancing called for by the pandemic health orders.
- She became louder and repeatedly called Cst. [REDACTED] “a dick”, “a fuckin dick” and told him to “suck dick” or “suck a dick”, although in her interview Ms. [REDACTED] downplayed this aspect of her behaviour. At one point, Cst. [REDACTED] referred to himself as a “big dick” should he have to write Ms. [REDACTED] a ticket.
- When Ms. [REDACTED] came within a foot or two of Cst. [REDACTED] and thrust her cellphone in his face he told her to back up and she could take photos, but if she put her phone in this face again, he said he would “smack it”, whereas she says he said, “smack you” (IMG 0013, her video clip, being unintelligible here). The video then shows a close-up of Cst. [REDACTED] hand, then he says “Ooooooh” as he lowers his hand, and this is followed by Ms. [REDACTED] saying, “Why’d you do, why”, and the video ends.
- Cst. [REDACTED] had stayed near Cst. [REDACTED] while Cst. [REDACTED] and Cst. [REDACTED] had moved off with the street-cleaning crew. Cst. [REDACTED] indicated that it was after Cst. [REDACTED] had been dealing with Ms. [REDACTED] for a few minutes that he told her she needed to back up or he was going to smack the phone out of her hand.
- Ms. [REDACTED] backed away from Cst. [REDACTED] kept her phone pointed at him, still at a distance likely less than two meter and continued to point her phone at him, and started to ask questions of Cst. [REDACTED] about the police abusing women.
- Ms. [REDACTED] did not immediately leave after she said Cst. [REDACTED] threatened to smack her. Their exchange continued a short while longer as captured in IMG 0016, ending with Cst. [REDACTED] unfortunate comment to her that she should go back to selling drugs.
- It is unfortunate that the street security camera video footage does not capture Cst. [REDACTED] placing his hand in front of Ms. [REDACTED] cell phone. It would have been helpful in determining how that came about. However, for 17 seconds (from 10:01:41 a.m. until 10:01:58 a.m.) the East Hastings

Street door to the OPS at 390 Columbia Street was open such that it blocked a view of Ms. [REDACTED] and the right half of Cst. [REDACTED] body.

Therefore, its utility is limited to providing a helpful context in terms of the overall sequence of events.

- Regarding the allegation by Ms. [REDACTED] that Cst. [REDACTED] threatened to smack her, it does not appear to be born out by the evidence. It was her repeated approach within the two meters of Cst. [REDACTED] with her cellphone thrust into his face that prompted him to say that he would smack the cellphone. He then followed by holding up his hand to force her to move her cellphone away from his face. The issue of what Cst. [REDACTED] said or did not say here cannot be resolved in the context of this review. What is apparent is that he did not “smack” her or knock her cellphone from her hand and she backed up. He had asked her several times to stay six feet away from him and she had disregarded him. The account of Cst. [REDACTED] is strong apparent corroboration for Cst. [REDACTED] account. At the end of the day, whether Cst. [REDACTED] said that he would “smack it” or “smack you” his purpose was to get Ms. [REDACTED] more than six feet away from himself, given that she was not wearing her mask over her nose or mouth and was shouting such that he could see particles of spit in the air.

Discreditable Conduct pursuant to s. 77(3)(h)

74. I will deal with the first alleged conduct of concern, namely the complaint that Cst. [REDACTED] engaged in discreditable conduct while on duty, by conducting himself in a manner that he knew or ought to have known would be likely to bring discredit on the Vancouver Police Department by his conduct and comments in relation to Ms. [REDACTED] including but not limited to uttering a verbal threat to her pursuant to s. 77(3)(h) of the Act.

75. The essential elements of this alleged misconduct are:

- 1) The member is on or off duty,

- 2) the member conducts themselves in a manner (act or behaviour),
 - 3) that the member knows, or ought to have known
 - 4) would be likely to bring discredit on the municipal police department.
76. The law regarding how the legal analysis of “discreditable conduct” in the police complaint context is clear. The fact that s. 77(3)(h) of the Act sets out the elements and then specifies “including, without limitation”, before positing three specific ways in which misconduct may occur, makes it clear that the category of discreditable conduct is wide and large, and encompasses any act or behaviour that is likely to bring discredit on the municipal police force.
77. The often-quoted test articulated in *Toy v Edmonton Police Service* (2014 ABCA 353), at para. 11, is:
- In sum, the test involves an objective evaluation as would be made by a dispassionate reasonable person fully apprised of the circumstances and with due regard for any applicable rules and regulations (or law) in force and with due regard to good faith considerations where the officer under scrutiny was required to exercise discretion under the circumstances.
78. Therefore, to assess the conduct of Cst. [REDACTED] I must consider the circumstances of the Incident objectively through the eyes of “a dispassionate reasonable person fully apprised of the circumstances”, taking into account any applicable rules and regulations, or any law, and any good faith considerations where the officer was required to exercise discretion. Would a reasonable person from the community find that the officer’s conduct likely discredits the reputation of the police force? In this case there are aspects of Cst. [REDACTED] behaviour that were less than a credit to the VPD. However, when one considers all the circumstances, those circumstances provide a reasonable basis for Cst. [REDACTED] conduct.
79. I will deal first with the negative aspects of Cst. [REDACTED] behaviour:
- Initially taken back by Ms. [REDACTED] approach and insults, Cst. [REDACTED] allowed himself to be drawn into further contact with her and permitted the situation to deteriorate.

- He engaged in a form of disrespectful exchanges with her, essentially adopting her rude and disrespectful tone.
- There is no indication that he or any of the other officers explained to Ms. [REDACTED] why they were on the corner in terms of escorting the City's clean-up crew, which might have defused the situation.
- If Cst. [REDACTED] was not going to write her a violation ticket for jaywalking or for not socially distancing and improper mask wearing then he ought not to have referred to these matters other than to warn her to comply.
- At the first reasonable opportunity Cst. [REDACTED] should have removed himself from Ms. [REDACTED] vicinity and if she had then pursued him shouting as she was, then other officers by their presence might have discouraged her behaviour.
- As opposed to saying that he was going to smack her cellphone after she had repeatedly disregarded his requests that she keep to the two meter/six-foot social distancing rule, he could have simply moved away and ended their interaction that way. Instead, he continued to engage and after she disregarded his directions to move back, his abrupt outstretching of his arm and hand towards her cellphone and towards her only served to make a bad situation worse.
- At times Cst. [REDACTED] tone with Ms. [REDACTED] was sarcastic.
- Cst. [REDACTED] comment towards the end of their interaction that Ms. [REDACTED] go back to dealing drugs was inappropriate, unnecessary, bound to make things worse, and when he explained it, the comment pertained to persons other than Ms. [REDACTED]

80. I will now consider other aspects of Cst. [REDACTED] behaviour in view of the circumstances:

- The incident must be viewed in light of the COVID 19 pandemic and the fact that vaccinations were just becoming more widespread.
- Strict rules were in place requiring people to wear masks in proximity to other persons.

- Socially distancing from others was required and practiced widely as an effective way of preventing the spread of the virus.
- All four police officers were masked.
- Ms. [REDACTED] sought out Cst. [REDACTED] and focused her anger and obscenities at him.
- In the main Cst. [REDACTED] chose to ignore the profanities and insults that Ms. [REDACTED] persisted in shouting at him.
- He chose to ignore her jaywalking and improper mask wearing in terms of not issuing violation tickets for her violations.
- Cst. [REDACTED] asked her several times to not come so close to him.
- She was persistent. She did not follow directions to step back and socially distance.
- She was shouting, and Cst. [REDACTED] saw particles of spit come from her mouth.
- She was not wearing her mask over her face.
- She continued to try to engage him in exchanges that she appeared to be videorecording on her cellphone.
- By her behaviour Ms. [REDACTED] seemed to want to provoke an incident that she could record.
- Apart from putting his arm up and his hand towards the cellphone she thrust in his face (about one foot from his face) to discourage her from continuing to come too close to him again, Cst. [REDACTED] did nothing physical that could be considered aggressive or threatening in relation to Ms. [REDACTED]
- The videos Ms. [REDACTED] provided to Ms. [REDACTED] to post on Twitter were only a select part of Ms. [REDACTED] interaction with Cst. [REDACTED] and had the unfortunate effect of portraying Cst. [REDACTED] in a less than positive light.

81. Cst. [REDACTED] was on duty. He was engaged in the behaviour shown in the evidence. Did he know or ought to have known that his behaviour would be

likely to bring discredit on the VPD? I find that as “a dispassionate, reasonable person fully apprised of the circumstances” I am unable to make this apparent finding. I am not of the view that the evidence appears sufficient to substantiate the allegation of discreditable conduct. While aspects of Cst. ██████ behaviour would not bring credit to the VPD, when viewed in the context of all the circumstances of the Incident, his behaviour appears to fall short of being discreditable. It is to be remembered that in April of 2021 the pandemic and the rules to prevent its spread were putting extra stress and pressure on those individuals obliged to deal with the public in their employment, including police officers.

82. Therefore, having given this matter careful consideration I find that I am unable to conclude that the evidence presented is sufficient to substantiate the allegation of discreditable conduct contrary to s. 77(3)(h) of the Act.

Discourtesy pursuant to s. 77(3)(g)

83. I turn now to the allegation of police misconduct by discourtesy pursuant to s. 77(3)(g) of the Act, which is defined as follows:

“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;

84. “Discourtesy” is defined by the Oxford English Language by Google as “rude and inconsiderate.” Synonyms include being “rude” or “uncivil”. Based on the evidence I have considered and set out in these reasons I find that at times in his interactions with Ms. ██████ Cst. ██████ made the situation worse by being discourteous to her. His tone was at times sarcastic and lacking in respect. In particular, Cst. ██████ comment that Ms. ██████ go back to dealing drugs was discourteous, rude, and uncivil, apparently without a basis in fact, and completely unnecessary.

85. While some might consider, given what Ms. [REDACTED] was saying to him and how she was behaving that he was justified or in some way excused for his rudeness and lack of civility, this type of response from a well-trained police officer is not to be condoned. Cst. [REDACTED] was not under threat of physical harm. He was merely experiencing a barrage of profanity from an irate member of the public on a public street in the company of fellow officers. Such incidents are unfortunately not rare and neither the public nor the police department are well served by such a response.

86. For these reasons I find that there appears to be sufficient evidence to substantiate the allegation of discourtesy in relation to Cst. [REDACTED]

Conclusion and Next Steps

87. On reviewing the Final Investigation Report containing all the evidence in this matter, I am satisfied of the following regarding each allegation of misconduct alleged in relation to Cst. [REDACTED]:

1. The evidence does not appear to be sufficient to substantiate the allegation of Discreditable Conduct while on duty by conducting himself in a manner that he knew or ought to have known would be likely to bring discredit on the Vancouver Police Department in relation to his dealings with Ms. [REDACTED] pursuant to s. 77(3)(h) of the Act; and
2. The evidence does appear to be sufficient to substantiate the allegation of Discourtesy by failing to behave with the courtesy due in the circumstances towards a member of the public in the performance of his duties pursuant to s. 77(3)(g) of the Act in relation to some of his interactions with Ms. [REDACTED] particularly when he said to Ms. [REDACTED] "I have no idea what you are talking about, no idea, no idea ma'am, go back to dealing drugs, see ya".

88. It follows that the taking of disciplinary or corrective measures are required to be taken in relation to the second allegation of misconduct set out above in relation to discourtesy.
89. I hereby notify the relevant parties of the next steps pursuant to s. 117(7) and (8) of the Act.
90. I have determined the range of disciplinary or corrective measures to be considered under s. 126(1) of the Act for Cst. [REDACTED] includes one or more of the following:
- i. To require the member to take training or retraining on methods of deescalating verbal and physical confrontations,
 - ii. To require the member to take a specified program on harm reduction for individuals suffering from addictions,
 - iii. To require the member to meet with Ms. [REDACTED] in the company of a police supervisor and apologize to her for his behaviour, if Ms. [REDACTED] is willing to meet,
 - iv. To reprimand the member verbally or in writing for his conduct,
 - v. To provide the member with advice as to his conduct.
91. Having considered the factors set out in s. 120(3) of the Act, I have decided to offer Cst. [REDACTED] a pre-hearing conference regarding this allegation. I have considered whether to offer a pre-hearing conference in this case is contrary to the public interest, and I have concluded that it is not.
92. I am directing Cst. [REDACTED] to advise the Registrar within 5 days when a decision has been made on whether to accept the offer of a pre-hearing conference.
93. Section 118(1) of the Act provides that a discipline hearing concerning the apparently substantiated misconduct allegation must be convened within 40 business days of notice of this decision.

94. Cst. [REDACTED] may, pursuant to s. 119(1) of the Act, 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 the 10th day of December, 2021.

The Hon. E. A. Arnold-Bailey

The Honourable Elizabeth A. Arnold-Bailey

Retired Justice of the British Columbia Supreme Court