

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  
AN OFFICER OF THE VICTORIA POLICE DEPARTMENT

**NOTICE OF ADJUDICATOR'S DECISION**

TO: Ms. [REDACTED] (the "Complainant")

AND TO: Constable [REDACTED] (Cst. [REDACTED] the  
"Member")  
c/o Victoria Police Department  
Professional Standards Section

AND TO: Sgt. [REDACTED], Investigator (the "Investigator")  
Victoria Police Department  
Professional Standards Department

AND TO: Mr. Clayton Pecknold (the "Commissioner")  
Police Complaint 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 complaints of misconduct concerning the Member alleged to have taken place on or about August 24, 2019 involving the Complainant.
2. I have been appointed Adjudicator in connection with this matter as a result of the Commissioner's order of April 29, 2021 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 relation to the following specific allegations of misconduct concerning the Member:

*(i) That on or about August 24, 2019, the Member committed neglect of duty pursuant to section 77(3)(m) (ii) of the Police Act by intentionally, or recklessly, neglecting to properly investigate domestic violence issues relating to the Complainant; ("Misconduct Allegation # 1")*

*(ii) That on or about August 24, 2019, the Member committed acts of Discourtesy involving the Complainant pursuant to section 77(3)(g) of the Police Act ("Misconduct Allegation #2"); and*

*(iii) That on or about August 24, 2019, the Member committed Abuse of Authority pursuant to section 77(3)(a)(iii) of the Police Act in his dealings with the Complainant ("Misconduct Allegation #3").*

4. Collectively, Misconduct Allegation # 1, 2 and 3 are referenced in this decision as the Misconduct Allegations ( the "Misconduct Allegations").
5. My conclusions reached as a result of a review of the Final Investigation Report dated March 12, 2021 ( the "Final Investigation Report" or "FIR") are that the evidence relating to the Misconduct Allegations concerning the Member does appear sufficient to substantiate such allegations , thereby constituting misconduct and therefore, potentially requiring consideration of disciplinary or corrective measures.

6. The next steps are set out below. They will commence with a new disciplinary hearing on the substantiated misconduct allegations involving the Member unless a prehearing conference is accepted by the Member and resolves the matters in issue.

## **II History of Proceedings and details of the Complaint - Section 117(8)a**

7. On August 24, 2019, an incident took place at [REDACTED], Victoria and other nearby locations, that appears to have resulted in serious injuries to the Complainant.
8. Cst. [REDACTED] was dispatched to investigate a report of possible domestic abuse at the [REDACTED] location, ultimately assisted by Cst. [REDACTED] (“Cst. [REDACTED] and Cst. [REDACTED] (“Cst. [REDACTED] all of the Victoria Police Department (“VPD”).
9. As a result of the attendance of the three officers, an initial complaint was filed by the Complainant September 26, 2019. A supplemental complaint augmenting the detail of the matters in issue was delivered August 21, 2020. The complaints were filed with both VPD and the Office of the Police Complaint Commissioner (“OPCC”), raising the Misconduct Allegations ( the “Complaint”).
10. Following a review of the Complaint by OPCC staff, it was accepted as admissible and forwarded to the Professional Standards Section of VPD for investigation.
11. As noted in the Complaint, the misconduct alleged related to the members’ inappropriate dealings with the Complainant and in particular, their failure to appropriately investigate possible domestic violence suffered by the Complainant.
12. The Investigator completed his investigation and submitted the Final Investigation Report to the relevant discipline authority, Inspector [REDACTED] VPD ( the “Discipline Authority”) on March 12, 2021.
13. On March 30, 2021, the Discipline Authority issued his decision pursuant to section 112 of the *Police Act* concerning this matter. The Discipline Authority found that the Misconduct Allegations were not substantiated for any of the Members.
14. In an order made April 29, 2021, the Commissioner determined that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect with respect to the allegations involving Cst. [REDACTED]. The allegations concerning Csts. [REDACTED] and [REDACTED] were not found to be incorrect.

15. Specifically, the Commissioner expressed the view that with respect to the Member, the Discipline Authority erred:

*...in not assessing Constable ██████ obligation to conduct a risk-focused investigation in a manner consistent with VicPD policy, the Provincial Violence Against Women in Relationships (VAWIR) policy, and mandatory domestic violence training. In my view, in light of Cst. ██████ awareness of a no contact condition between Ms. ██████ and Mr. ██████ except with her express consent, and Mr. ██████ criminal history, Constable ██████ did not adequately assess the risk Mr. ██████ posed to Ms. ██████. Further, I am of the view that, considering the context of a serious domestic violence investigation, the Discipline Authority did not employ a sufficiently high standard of care in his overall assessment of Constable ██████ conduct.*

16. This review has focused on analysis of the Misconduct Allegations in the context of the FIR.

### **III Section 117**

17. The statutory authority governing this review is found in section 117 of the *Police Act*.
18. 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.
19. 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.
20. 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, including court proceedings, that may have a connection to the misconduct alleged. Nor is the Adjudicator's role 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.

21. 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.
22. 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.*

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

#### **IV Records submitted for review**

24. In accordance with subsection 117(6) of the *Police Act*, the Commissioner has provided the FIR for my review which was prepared by the Investigator. Also included was a flash drive providing electronic copies of the FIR documents and videos detailing much of the encounter with between the members and the Complainant.

25. The comprehensive and detailed FIR, dated March 12, 2021, comprises 112 pages of narrative, plus extensive related attachments in two large binders. It details the evidence of all relevant parties concerning the Misconduct Allegations.

26. The FIR and related materials were delivered to me May 4, 2021. Section 117(9) of the *Police Act* confirms that my review must be completed within 10 business days with subsequent notice to the relevant parties of my decision and next steps.

#### **V Misconduct and the Police Act- Allegations considered** **– Section 117(8)c and 108 Police Act**

27. The evidence set out in the Final Investigation Report outlines the perspectives of the various members, including Cst. ■ the Complainant, civilian witnesses and others concerning the events involving the Complainant.

28. The FIR also includes extensive collateral materials on medical records of the Complainant, VPD and Provincial policies, case law and general principles associated with a variety of issues. This includes materials on the investigation of domestic violence allegations and incidents involving violence against women in relationships.

29. The FIR contains material outlining the details of the Complainant's perspective of events, beyond the initial brief complaint which was subsequently augmented with substantially more details.

30. Turning to the specifics of possible misconduct under Misconduct Allegations, section 77 of the *Police Act* provides, in part, as follows:

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

*(a) conduct that constitutes a public trust offence described in subsection (2), or*

*(b) conduct that constitutes*

*(i) an offence under section 86 [offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint] or 106 [offence to hinder, delay, obstruct or interfere with investigating officer], or*

*(ii) a disciplinary breach of public trust described in subsection (3) of this section.*

*(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:*

*(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,*

*(iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;*

*(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;*

*(m) "neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:*

*(ii) promptly and diligently do anything that it is one's duty as a member to do;*

31. Also, of apparent relevance to Misconduct Allegations are the specific policies of the VPD and the Province of BC concerning the investigation of issues arising from complaints involving violence against women in relationships. As noted above, those policies are detailed in the FIR.
32. This review must independently assess the circumstances of the Member's interactions with Complainant, the actions of the various other parties and the totality of the circumstances relating to the same as set out in the FIR. As noted above, the goal at this stage is not to decide any of the issues arising from the FIR, but rather to determine whether or not it appears that there is evidence relating to the Misconduct Allegations sufficient to warrant moving to the next stage or proceeding, a Discipline Hearing.
33. 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 The Evidence arising from the Final Investigation Report**

34. My review of the FIR 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 will ultimately be proven.
35. The apparent substance of the Misconduct Allegations involving Cst. ■ relates to the manner in which he responded to a dispatch involving a complaint of possible domestic violence.
36. It appears that the subject of that concern was the Complainant, although that appears to have been unknown to Cst. ■ when initially dispatched. A number of unusual moves and actions appear to have taken place between the initial calls to 911 and the eventual involvement of Cst. ■ with the Complainant.
37. Subsequent to her dealings with Cst. ■ and other members, it appears that the Complainant was ultimately hospitalized at Victoria General Hospital Emergency ward. While in hospital, the Complainant appears to have reported extensive sexual assaults, scratches, bruises and contusions all arising from her involvement with her former boyfriend, Mr. ■ The



assaults were reported to have taken place in the Complainant's mother's home and apartment [REDACTED] at [REDACTED] Victoria, all without her consent.

38. The specific evidence in the FIR that I have considered relevant to the matters in issue appears to confirm the following general evolution of events:

- (a) In the earlier morning hours of August 24, 2019, the Complainant was asleep in her mother's home on [REDACTED] Victoria. She awoke to find that her boyfriend [REDACTED] [REDACTED] was standing in her bedroom. It was unclear how Mr. [REDACTED] entered the home;
- (b) As a result of a pre-existing court order, Mr. [REDACTED] was prohibited from having contact with the Complainant, or attending any residence she occupied, without her express consent;
- (c) Mr. [REDACTED] physically and sexually assaulted the Complainant in her mother's home. In an attempt to end the assault, the Complainant agreed to drive Mr. [REDACTED] to his apartment at [REDACTED], Victoria. However, on arrival Mr. [REDACTED] refused to leave the vehicle until the Complainant agreed to go up to his apartment;
- (d) Mr. [REDACTED] continued physically and sexually assaulting the Complainant in his apartment resulting in screams and banging that were clearly audible to another resident of the building, (the "Resident"). The Resident reported that she could hear a woman from apartment # [REDACTED] crying and telling a male person to "stop". The Resident reported the altercation to police in a 911 call at 2:36 am;
- (e) At 2:37:51 am, Cst. [REDACTED] was dispatched to attend to investigate the Resident's report arriving on scene at 2:42. Csts. [REDACTED] and [REDACTED] also on duty dealing with another matter, volunteered to assist in the follow up. A reserve constable was shadowing Csts. [REDACTED] and [REDACTED] and also joined in support;
- (f) Prior to arriving on scene, a further report was received that a male and female had left the apartment building, the female leaving first later followed by the male. The male was reported to have entered and started a white SUV driving after the female, ultimately picking her up and leaving at a high rate of speed;
- (g) Cst. [REDACTED] continued to the [REDACTED] address to ensure that the possible victim was not still in apartment [REDACTED];
- (h) Cst. [REDACTED] arrived on site and contacted the Resident to go over her information on the apparent altercation. Csts. [REDACTED] and [REDACTED] were directed by Cst. [REDACTED] to attend at apartment # [REDACTED]. There was no response at the door, although apparently unlocked;
- (i) Cst. [REDACTED] was advised by the Resident that the male leaving apartment [REDACTED] was [REDACTED] [REDACTED] wearing a white t shirt. She further reported that the argument in the apartment had been escalating for over 20 minutes before her call to police;
- (j) The members converged in the parking lot and while comparing the information that they had gleaned, heard a report of a white SUV losing control and driving down steps into a lower courtyard at [REDACTED] a location close to the members;

- (k) The members attended at [REDACTED] joining two other officers investigating the crash. The members learned that dispatch was dealing with a call from a person claiming to be the registered owner of the SUV in question wishing to report a theft of the same;
- (l) At the same time, reports were received from persons on scene that a female and a [REDACTED] male in a white t-shirt had left the vehicle and was headed back towards [REDACTED]. Neither party had apparently called out for assistance after the crash;
- (m) The members decided to return to [REDACTED] anticipating that the persons involved in that crash were the same who had left apartment # [REDACTED];
- (n) As Cst. [REDACTED] approached the apartment building entrance, a yellow cab arrived. A [REDACTED] man in a white t shirt an exited the apartment lobby area along with a woman. Both appeared to be moving to enter the taxi. Cst. [REDACTED] then intervened. He assumed conduct of dealings with the male, while Cst. [REDACTED] moved to take control of and interview the female;
- (o) After an initial interaction, the male, Mr. [REDACTED] self-identified himself to Cst. [REDACTED] volunteering that he had just been released from jail. Mr. [REDACTED] was advised that he was under investigation for impaired driving and a possible domestic assault;
- (p) Mr. [REDACTED] responded angrily to Cst. [REDACTED] comments. As a conflict appeared imminent, Cst. [REDACTED] ordered Mr. [REDACTED] to turn around to be placed in restraints. Mr. [REDACTED] complied with that direction;
- (q) At some point, Cst. [REDACTED] became aware of court ordered no contact conditions relating to Mr. [REDACTED] and the Complainant. Cst. [REDACTED] was apparently aware that contact was prohibited without the Complainant's express consent. It is unclear when Cst. [REDACTED] learned of the no contact order and, as well, whether or not Cst. [REDACTED] had reviewed Mr. [REDACTED] criminal record and outstanding charges;
- (r) Cst. [REDACTED] made inquiries of Mr. [REDACTED] about the vehicle that had crashed down the stairs at [REDACTED];
- (s) Cst. [REDACTED] moved the Complainant to another location to question her. There appear to be material factual differences as to precisely how far the Complainant was moved from Mr. [REDACTED] and where the questioning took place;
- (t) The Complainant does not appear to have reported that she was injured, had been assaulted or that a no contact order existed for her protection. Specifically, she did not answer questions posed to her about what had happened with Mr. [REDACTED] if anything. Rather the Complainant appears to have emphasized that she was fine, expressed her desire to leave the premises and did not seek police assistance other than to report her SUV as having been stolen. The discussion with the Complainant was brief and largely unproductive;
- (u) Cst. [REDACTED] and Cst. [REDACTED] conferred while Cst. [REDACTED] monitored the two parties. Cst. [REDACTED] decided that he would have a further discussion with the Complainant while Cst. [REDACTED] moved to deal with Mr. [REDACTED];
- (v) Again, there appears to be a conflict in the evidence as to where this conversation took place, the distance between the Complainant and Mr. [REDACTED] specifically what was said and Cst. [REDACTED] demeanor in making those inquiries;

- (w) It does not appear to be in dispute that the Complainant voiced no report of a domestic assault by Mr. [REDACTED]
- (x) Cst. [REDACTED] however, appears to have challenged the Complainant on her continued reports of a stolen vehicle. Again, the tone, content and nature of the discussion between Cst. [REDACTED] and the Complainant is very much in issue;
- (y) Cst. [REDACTED] appears to have raised the issue of the no contact order and asked if the Complainant consented to Mr. [REDACTED] being on the premises and in contact with her;
- (z) The Complainant's specific response is in dispute, however, it appears that the Complainant did not express a concern with Mr. [REDACTED] presence;
- (aa) Cst. [REDACTED] and the other members present did not report observing any injuries on the Complainant, nor evidence of an assault. Cst. [REDACTED] also appears to have concluded that the Complainant was in control of circumstances and not fearful of Mr. [REDACTED]
- (bb) Cst. [REDACTED] decided to release Mr. [REDACTED] from restraints after reconfirming with dispatch that Mr. [REDACTED] could be in the presence of the Complainant with her consent;
- (cc) What took place next was again in issue. It appears that Mr. [REDACTED] and the Complainant came together again in the parking lot while the members conferred. A taxi was called by someone, potentially Mr. [REDACTED]. In some manner, the Complainant made her way into the taxi and left directing the cab driver to her mother's home. Mr. [REDACTED] appears to have returned to the apartment building;
- (dd) The FIR appears to confirm that the cab driver immediately noted that the Complainant was upset and repeatedly asked if she needed help or to go to the hospital. Those enquiries were apparently acknowledged, but rebuffed by the Complainant who appeared to be crying;
- (ee) Although the FIR appears to indicate that no injuries were observed on the Complainant, the photos taken from inside the cab appear to show evidence of scratches and contusions on the Complainant's left face and neck. As well, the cab driver appears to have confirmed such observations as the Complainant left the vehicle;
- (ff) On arrival at her destination, the Complainant's mother appears to have easily observed the injuries to her neck and face. Again, it appears that strong suggestions were made to call an ambulance, which were again rebuffed by the Complainant. However, it appears that the Complainant's mother called for an ambulance herself at approximately 4:21 am. As a result, an ambulance attended. The Complainant was assessed and subsequently transported to the Emergency Department at Victoria General Hospital where she was admitted for treatment of her injuries;
- (gg) The medical records in the FIR starting at page 64, and in Tab 4 of Binder 2 appear to set out evaluations of the Complainant that conclude as follows:
  - (i) Obvious injuries to neck-face
  - (ii) Physical injury descriptions to several parts of the body
  - (iii) Multiple abrasions on her face-signs of strangulation injury to her neck
- (hh) Saanich Police appear to have been called to follow up on the injuries to the Complainant and met her at the hospital. Interviews with the Complainant were undertaken and an investigation followed; and

- (ii) Ultimately Mr. [REDACTED] was charged with uttering threats, assault, sexual assault, forcible confinement, overcome resistance by choking, driving while prohibited, mischief and break and enter, all in relation to the Complainant on August 23/24 2019. Mr. [REDACTED] was convicted on a number of those charges [REDACTED] Globally it appears that Mr. [REDACTED] was sentenced to a total of 294 days in jail on multiple matters, including several relating to the Complainant.

## **VII The Complaint**

39. As noted above, the Complaint arising from the foregoing is comprised of two documents:

- (i) An initial online complaint filed by the Complainant in late August but received by the OPCC September 26, 2019; and
- (ii) A supplemental submission detailing specific concerns giving rise to the Misconduct Allegations dated August 21, 2020.

40. The Complaint appears to provide a detailed outline of the Complainant's perspective on her dealings with Mr. [REDACTED] and the members, including Cst. [REDACTED]. The specific issues relating to Cst. [REDACTED] are alleged to be as follows:

- (i) The Complainant reports that she had been the victim of a serious assault, including a sexual assault, committed by Mr. [REDACTED]. She also reports that Mr. [REDACTED] had taken and crashed her SUV without her consent and, as well, threatened her life as the members, including Cst. [REDACTED] were nearby;
- (ii) In the Complainant's view, the members, including Cst. [REDACTED] failed to take appropriate measures to investigate the circumstances surrounding Mr. [REDACTED]. As well, the members, including Cst. [REDACTED] failed to press criminal charges against Mr. [REDACTED] when the circumstances of his background, the no contact order and his dealings with the Complainant should reasonably have required such action;
- (iii) Throughout her dealings with the members, the Complainant is alleged to have been treated in a degrading, demeaning and discourteous manner by the members and in particular, Cst. [REDACTED]
- (iv) Cst. [REDACTED] is alleged to have used profanity in talking to the Complainant, mistakenly attributed hysteria to the Complainant and minimized her concerns for the security of her vehicle;
- (v) Cst. [REDACTED] is alleged to have made light of the Complainant's statements in a sexist manner;
- (vi) Cst. [REDACTED] is alleged to have failed to protect the Complainant from contact with Mr. [REDACTED] resulting him making verbal threats to kill her as the two waited near the members;
- (vii) Cst. [REDACTED] aware of the no contact order binding Mr. [REDACTED] failed to confirm Mr. [REDACTED] criminal history and identify the high risk he posed to the Complainant;

- (viii) Cst. ■ failed to accurately assess the injuries sustained by the Complainant at the hands of Mr. ■
- (ix) Cst. ■ is alleged to have inappropriately threatened the Complainant with a mischief charge unless she withdrew her complaint that her SUV had been stolen; and
- (x) Cst. ■ is alleged to have failed to properly assess the Complainant's needs and failed to ensure that she was safe as police ended their involvement

41. Most of the issues raised by the Complaint appear to have been addressed in the Final Investigation Report. However, it is clear that there are significantly different perspectives on what took place when the members dealt with the Complainant and Mr. ■

**VIII Analysis of the Misconduct Allegations- Sections 117(8)(d) & (i) of the Police Act**  
**Does the evidence appear sufficient to substantiate the Misconduct Allegations?**

42. I now turn to an analysis of the evidence considering each of the Misconduct Allegations in turn.

43. 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.

44. This stage of analysis under section 117 of the *Police Act* does not result in findings of fact on any alleged misconduct beyond analysis of whether or not the misconduct allegations appear substantiated against any of the Members based on analysis of the facts set out in the FIR.

45. In performing this analysis, I have, of course, noted that the author of the FIR concluded, after a comprehensive analysis, that the evidence did not appear sufficient to support allegations of Neglect of Duty, Discourtesy or Abuse of Authority involving Cst. ■ That same conclusion was reached by the Discipline Authority. I am also aware that these conclusions are not supported by the Commissioner in relation to the actions of Cst. ■

46. I now turn to consider the specific misconduct allegations relevant to Cst. ■

## **IX Misconduct Allegation (1)**

### Initial 911 Call and Dispatch

47. The first misconduct allegation relates to the conduct of Cst. ■ as an investigating officer. Specifically, the allegation to be reviewed is as follows:

*(i) That on or about August 24, 2019, the Member committed neglect of duty pursuant to section 77(3)(m) (ii) of the Police Act by intentionally, or recklessly, neglecting to properly investigate issues relating to the Complainant, including issues of domestic violence; (“Misconduct Allegation # 1”)*

48. As noted above, the evidence in the FIR appears to describe a variety of steps taken by Cst. ■ following his dispatch in relation to a possible domestic violence allegation. The 911 caller, the Resident could apparently hear male and female voices yelling at each other in apartment ■.

49. Shortly after making that call, the Resident appears to have reported that the presumed occupants of unit ■ had left the building. The report suggested that a female had left walking away soon followed by the male, initially on foot, and then in a white SUV. The female was then apparently observed getting into the SUV which left at a high rate of speed.

50. Given the nature of the dispatch, it appears that Cst. ■ and the other attending members, were aware of the location of the apartment of concern, but had no initial information on the parties involved.

51. It appears, however, that all attending officers, including the dispatched Cst. ■ were aware that they were to comply with the terms of the Provincial “Violence against Women in relationships policy” issued December 10, 2010 and, as well, the VPD policy on “Intimate Partner Violence” as part of their core duties. Dispatch as well appears to have recognized the importance of such a report by designating the call “Priority 1” for attending officers, including Cst. ■

52. Also relevant are the provisions of sections 26(2), 34(2) and 38 of the Police Act which generally define the duties of police officers. These provisions augment the long standing common law duty of police recognized as duties to:

- (a) Preserve the peace
- (b) Protect life and property
- (c) Prevent crime
- (d) Enforce the law
- (e) Apprehend offenders

53. As noted above, the initial step appears to have been to attend on scene and speak to [REDACTED] The Resident. Cst. [REDACTED] appears to have taken on that duty. Csts. [REDACTED] and [REDACTED] attended at apartment [REDACTED] but received no response to their door knocks. No entry was forced as the officers appeared to have concluded that there was imminent issue of distress or potential harm to occupants of the unit.

54. Cst. [REDACTED] inquiries did not assist in determining the name of the parties apparently in unit [REDACTED] nor further material details concerning the apparent dispute between the individuals involved.

55. Cst. [REDACTED] remained on scene, apparently anticipating that the two parties might return to the unit. While waiting a further dispatch call was received.

#### SUV crash

56. Dispatch appears to have advised Cst. [REDACTED] that a white SUV had crashed close to his location. He also appears to have learned that a male and female had been associated with the incident and appear to have left on foot, heading back downtown. Cst. [REDACTED] attended the scene and found other officers investigating the crash.

57. While on scene, Cst. [REDACTED] appears to have heard dispatch advise of a stolen vehicle report for the white SUV from a female registered owner who claimed the unit had been stolen from [REDACTED] Street.

58. Cst. [REDACTED] appears to have concluded that the original 911 call, the SUV crash and the male and female involved were likely related. He also appears to have concluded that a return to [REDACTED] was appropriate to potentially intercept the parties heading back to unit [REDACTED]. As such, Cst. [REDACTED] return to [REDACTED] expecting that he might be investigating an impaired driving incident.

Outside [REDACTED] treet

59. Cst. [REDACTED] was the first to arrive back at [REDACTED], soon followed by Csts. [REDACTED]. He appears to have observed a yellow taxi in front of the building and noted a male and female exiting the building lobby area. Cst. [REDACTED] appears to have believed that the description of the male matched the general description of the person associated with the initial domestic disturbance call and that of the person seen leaving the crashed SUV.
60. Cst. [REDACTED] appears to have quickly moved to intercede between the taxi and the two individuals. He also appears to have advised the male that “he was detained or arrested” and that he would need to be handcuffed. It appears that Cst. [REDACTED] was unclear as to what might have happened with these parties that early morning. He also appears to have been concerned as to the imminent risk posed by Mr. [REDACTED] given his apparent anger.
61. Cst. [REDACTED] appears to have taken the female, later identified as the Complainant, away from Mr. [REDACTED] to ask her questions. How far she was taken, and where, appears to be in dispute.
62. Cst. [REDACTED] succeeded in calming the male down and learned his name [REDACTED] and the fact that he had just been released from jail. Mr. [REDACTED] also advised that he had just moved into the apartment, unit [REDACTED]. Mr. [REDACTED] also reported that he had been released from jail on conditions.
63. Cst. [REDACTED] appears to have followed up on this information by seeking clarification of the release conditions relevant to Mr. [REDACTED]. In doing so he appears to have learned that Mr. [REDACTED] was prohibited from having contact with the Complainant without her express consent and, as well, prohibited from attending her residence on the same basis.
64. It is not evident whether or not Cst. [REDACTED] or any of the other officers sought and received details of Mr. [REDACTED] criminal history. It is also not clear whether or not Cst. [REDACTED] investigated the risk that Mr. [REDACTED] posed to the Complainant based on his history of dealings with her.
65. It does appear that much of Cst. [REDACTED] engagement with Mr. [REDACTED] focused on the impaired driving issue, and much less so on any domestic violence concerns.
66. As noted above, it appears that Cst. [REDACTED] had been interviewing the Complainant with little success or than confirming her identification. There does not appear to have been any complaint of assault or other criminal allegations relating to Mr. [REDACTED] despite questions posed by Cst. [REDACTED] as to her welfare and requests for details as to what had taken place that morning. Rather it appears that the Complainant was focused on her vehicle and the crash, continuing to insist it had been stolen.



67. Cst. ■ does not appear to have observed any injuries to the Complainant. He did not appear to believe that grounds existed for the arrest of Mr. ■
68. After approximately five minutes, it appears that Cst. ■ turned from dealing with Mr. ■ to discuss the circumstances with Cst. ■ Cst. ■ reported that the Complainant was saying little about either the possible domestic abuse or SUV crash. Notwithstanding that fact, however, Cst. ■ appears to have concluded that Cst. ■ had conducted an appropriate domestic violence interview with the Complainant.
69. Cst. ■ then moved to the Complainant while Cst. ■ covered Mr. ■ assisted by Cst. ■ The Complainant appears to have continued to be non-responsive to questions posed by Cst. ■ Cst. ■ does not appear to have observed any obvious injuries to the Complainant.
70. It appears, however, that most of Cst. ■ questions to the Complainant were focused on the SUV crash, her allegations that the SUV had been stolen and a suggestion that falsely reporting a stolen vehicle could result in mischief charges.
71. It does not appear, however, that Cst. ■ investigation with the Complainant focused on the Complainant's history with Mr. ■ the circumstances giving rise to the no contact order and issues that might have been relevant to her safety.
72. Cst. ■ was aware that Mr. ■ was an imposing figure, clearly angry in the presence of police. He does not appear to have devoted more than a few minutes of time to thoroughly evaluating the risks associated with Mr. ■ in relation to the Complainant.
73. Of interest, in his January 29, 2021 interview, Cst. ■ appears to have reported that while *"he was not satisfied that the domestic (is) over, he also had an obligation on the criminal side of the public mischief, about the car being stolen"*.
74. Being aware of the no contact terms, Cst. ■ did ask the Complainant about Mr. ■ presence. It appears, however, that Cst. ■ had differing responses on what he specifically asked the Complainant. In his January 29<sup>th</sup> statement, he reports having asked *"flat out, do you want to want him here?"* In his September 13, 2019 follow up report on PRIME, Cst. ■ reported that the Complainant was asked *"do you want to be here?"*. The general tone of the response appears to have been "Yes" from which Cst. ■ inferred that the Complainant consented to be in the presence of Mr. ■ The Complainant, of course, maintains that no one, including Cst. ■ asked her if Mr. ■ was in her presence with her express consent.
75. As a result of this response, Cst. ■ appears to have concluded that he no longer had grounds to detain Mr. ■ on the possible breach of "no contact" terms. Cst. ■ also appears to have concluded that he had insufficient evidence to detain Mr. ■ on an

impaired driving investigation. As a result, Mr. [REDACTED] was released him from handcuffs and immediately walked over to the Complainant.

76. As noted above, the Complainant subsequently left the premises in a taxi returning to her mother's home. She was later admitted to hospital and followed up with Saanich Police on a variety of matters involving Mr. [REDACTED]. As noted, Mr. [REDACTED] was subsequently convicted of several serious offences involving the Complainant.
77. Taking into consideration the law and policy noted above, it appears that Cst. [REDACTED] did not undertake a thorough and complete evidence based investigation into the risks posed by Mr. [REDACTED] to the Complainant.
78. It appears that Cst. [REDACTED] had met an uncooperative party in his dealing with the Complainant both in terms of explaining her own issues and those relating to possible domestic violence that she may have suffered. However, VPD and Provincial policies provide detailed guidance to officers dealing with such situations in the context of domestic abuse allegations. Officers are trained to consider that such apparent obstruction or lack of cooperation may well reflect genuine fear and concern on the part of victims of abuse. Provincial and VPD policies provide specific protocols to deal with such matters. These policies impose a high duty on attending officers to investigate domestic abuse allegations fully and sensitively, even in the absence of immediate complainant cooperation.
79. It appears that the criminal history of Mr. [REDACTED] particularly in relation to the Complainant, should have raised serious issues with Cst. [REDACTED] in assessing what had taken place with the Complainant. Two issues appear to have been relevant in this regard:
  - (a) If no effort was made to ascertain Mr. [REDACTED] criminal record once it became known that he had just been released from jail on conditions, a legitimate question appears to arise as to why; and
  - (b) If in fact Cst. [REDACTED] was aware of Mr. [REDACTED] criminal history, a legitimate question appears to arise as to why a more fulsome investigation of possible risks to the Complainant did not take place.
80. The very rapid shift in investigation by Cst. [REDACTED] to possible impaired or mischief matters appears to have left the real risk to the Complainant incompletely examined, along with the relevant relationship history with Mr. [REDACTED].
81. In addition, it is unclear why none of the attending members, including Cst. [REDACTED] noted injuries on the Complainant that appear to have been immediately apparent as she entered the taxi to leave the area. The medical records appear to clearly confirm significant recent trauma to the Complainant which, as the Court Records note, took place at the hands of Mr. [REDACTED].

82. It appears that the dealings with the Complainant may only have taken place in areas of limited light. However, to complete a thorough investigation, it appears evident that Cst. ■ should have removed the Complainant to an area with much better light to complete a thorough investigation of any possible injuries. Such a move appears to have been warranted as well to ensure that the Complainant was completely removed from sight and hearing of Mr. ■ to give her more confidence to speak to police.
83. Again, absent such safeguards, it appears that the investigation of the domestic violence report that took place was recklessly undertaken, brief and incomplete. As circumstances later evolved, Cst. ■ and the other members present were inaccurate in their assessment of Mr. ■ role in assaulting the Complainant and the risk he posed to the Complainant.
84. It appears that by failing complete a thorough evidence based, risk focused investigation, Cst. ■ may have failed in his duty to preserve the peace and to ensure that Mr. ■ was apprehended.
85. As well, it appears that Cst. ■ failed in his duty to investigate the domestic abuse matters. This is particularly of concern as the identification of injuries to the Complainant appears to have been missed by Cst. ■ and other members.
86. Finally, it appears that Cst. ■ failed in his duty to ensure the safety of the Complainant. This apparent issue related to both Cst. ■ failure to interview the Complainant in a safe, supportive and secure environment and the failure of Cst. ■ to protect the Complainant from Mr. ■ after he was released from handcuffs.
87. It also appears that each of these acts of misconduct by neglect of duty by Cst. ■ arose recklessly without good or sufficient cause.
88. As such, with respect to Misconduct Allegation #1, the evidence of the conduct of Cst. ■ if proven, appears to substantiate misconduct by neglect of duty under section 77(3)(m) (ii) of the *Police Act*.

#### **X - Misconduct Allegation # 2 -**

89. The next matter to be considered is the allegation that Cst. ■ treated the Complainant discourteously. The specific allegation is as noted above as follows:

*“That on or about August 24, 2019, the Member committed acts of Discourtesy involving the Complainant pursuant to section 77(3)(g) of the Police Act”*

90. The Complaint details a series of acts by Cst. ■ that the Complainant took as disrespectful, dismissive, threatening and demeaning. As noted above, it appears that these acts can be summarized as follows:
- (a) The Complainant is alleged to have been treated in a degrading, demeaning and discourteous manner by Cst. ■ throughout his dealings with her;
  - (b) Cst. ■ is alleged to have used profanity is talking to the Complainant, mistakenly attributed hysteria to the Complainant and minimized her concerns for the security of her vehicle; and
  - (c) Cst. ■ is alleged to have made light of the Complainant’s statements in a sexist manner.
91. It appears that Cst. ■ notes of his specific discussion with the Complainant were limited and that his recollection of details was uncertain. It appears, however, that Cst. ■ does not believe that he was demeaning or derogatory.
92. It also appears that the Complainant was uncertain as to the specifics of some details of her dealings with Cst. ■
93. The Investigator correctly notes in Final Investigation Report that the delict of “discourtesy” is defined as *“failing to behave with courtesy due in the circumstances”*. At page 108 of the FIR, the Investigator further notes as follows with respect to circumstances:
- “when speaking with the apparent victim of domestic violence, such as (the Complainant), an officer has a heightened obligation for civility, particularly with respect to gender (or sex) based terms which might be perceived as offensive or degrading”*
94. The Investigator notes, however, at page 109 of the FIR, that the circumstances also included investigations into the stolen SUV allegation and a possible impaired driving matter.
95. The FIR concludes that in all of the circumstances, the comments of Cst. ■ to the Complainant while possibly “unproductive”, as opposed to discourteous, did not reflect misconduct.
96. The most relevant circumstances of Cst. ■ involvement with the Complainant appear to be as follows:
- (a) First and foremost, Cst. ■ and other members had been dispatched to investigate a domestic violence allegation. The VPD and Provincial policies on such investigations clearly confirms that all responding officers have the highest duty to fully and completely investigate these matters in a sensitive and thorough manner;

- (b) Second, the circumstances surrounding Mr. ██████ would have appear to have raised the need for special care in investigating matters, particularly with a potential victim of violent domestic abuse. Cst. █ appears to have known of Mr. ██████ no contact order and recent release from jail. Cst. █ himself described Mr. ██████ as an imposing figure demonstrating frustration and anger. It appears self-evident that the circumstances surrounding any interview of the Complainant would need to confirm her safety and put her at ease to ensure a productive interview; and
- (c) Third, it also appears that while of collateral interest, the reported SUV theft and impaired investigation could only have heightened the Complainant’s concern in talking to Cst. █ particularly where implicit threats of a mischief charge were raised.

97. As such, it appears that the circumstances facing Cst. █ would have normally have dictated an approach reflecting a very careful and sensitive engagement of the Complainant. It appears clear that the Complainant’s sensitivity as to how she was treated, the tone of inquiries and what was said to her would be critical in ensuring that Cst. █ and other members attending could elicit relevant information on the violent assaults that had taken place with Mr. ██████

98. In such circumstances, it appears that the comments attributed to Cst. █ by the Complainant, if proven, may have been sexist, dismissive and demeaning.

99. It appears, therefore, that Cst. █ may have demonstrated discourteous behaviour towards the Complainant in the performance of his duties.

100. As such, with respect to Misconduct Allegation #2, the evidence of the conduct of Cst. █ if proven, appears to substantiate misconduct by discourteous behaviour in his dealings with the Complainant under section 77(3)(g) of the *Police Act*

### **XI - Misconduct Allegation # 3 – Abuse of Authority**

101. The third allegation of misconduct arises under section 77(3)(a)(iii) of the Police Act as follows:

*“That on or about August 24, 2019, the Member committed Abuse of Authority pursuant to section 77(3)(a)(iii) of the Police Act in his dealings with the Complainant”*

102. As noted, section 77(3)(a)(iii) provides as follows in setting out the definition of abuse of authority:

*(a)"abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,*

*(iii)when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;*

103. As noted in the FIR, there are often similarities in the evidence adduced with respect to allegations of discourtesy and abuse of authority. Misconduct alleged to be an abuse of authority is, however, generally more specific in terms of the nature of the offending language used by an officer.

104. On the evidence set out in the FIR, the allegations of the Complainant highlight Cst. ■ use of profanity and disrespect towards the Complainant implicitly arising as a result of her sex.

105. The Investigator concludes that the key issue turns on Cst. ■ use of the term “hissy fit” in challenging the Complainant’s version of events with her SUV. The suggestion is made that Cst. ■ was simply repeating a phrase reported by a third party after the SUV crash. It is further suggested that doing so was part of a reasonable effort to confirm that the Complainant was lying about her SUV being stolen.

106. It appears, however, that Cst. ■ did not simply put a report of a third party to the Complainant, rather he drew his own conclusion. At page 110 of the FIR, Cst. ■ is reported to have said:

*“people saw you downtown having a hissy fit, it sounds like you’re having a hissy fit”*

107. The Complainant reported that Cst. ■ comments were *“blatantly sexist towards women and implied that I was being hysterical and was not credible”*

108. Cst. ■ cannot recall using the term “hissy fit” nor an other demeaning or derogatory language.

109. A further specific complaint is that when Cst. ■ was asked by the Complainant about the condition of her SUV after the crash, he responded to the effect that :

*“It is a fucking ■ it’s fine.”*

110. This comment, along with the generally dismissive tone of responses to the Complainant's attempts to report that her vehicle was stolen, apparent chuckling during her statements and the threat to charge her with mischief were collectively taken as demeaning.
111. In all of the circumstances, it appears that throughout his dealings with the Complainant, Cst. ■ acted in a generally dismissive and oppressive manner.
112. It also appears that throughout his time on scene, Cst. ■ treated the Complainant as a suspect rather than a potential victim of sexual assault in the company of a man bound by a no contact order. Such an approach appears to have demonstrated disrespect for the Complainant as a woman, and demeaned her attempts to communicate with the officer.
113. It appears, therefore, that Cst. ■ treated the Complainant in an oppressive manner by using profane or insulting language that tended to demean or disrespect the Complainant based on her sex during the exercise of his duties.
114. As such, with respect to Misconduct Allegation #3, the evidence of the conduct of Cst. ■ if proven, appears to substantiate misconduct by abuse of authority under section 77(3)(a) (iii) of the *Police Act*

## **XII - Conclusion and Next Steps**

115. Applying the standard of review at this stage of the proceedings pursuant to sections 117(9) and 117(8)(d)(i) of the *Police Act*, I find that there appears to be evidence set out in the FIR concerning the Misconduct Allegations which, if proven, could substantiate the misconduct alleged with respect to Cst. ■ thereby potentially requiring disciplinary or corrective measures.
116. I hereby notify Cst. ■ of the next steps in this proceeding, pursuant to subsections 117(7) and (8) of the *Police Act*.
117. 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 Cst. ■ with respect to the Misconduct Allegations.
118. I am directing Cst. ■ 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.

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

- a. *requiring the member to engage with training or retraining in the investigation of domestic assault allegations, and,*
- b. *a suspension from service without pay*

pursuant to subsections **126(1)** of the *Police Act*.

120. Pursuant to s 113 of the *Police Act*, the Complainant has the right to make submissions:

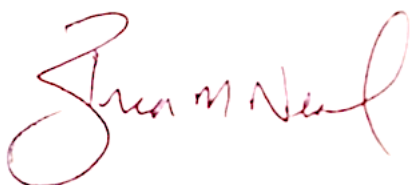
- (a) at a discipline hearing (as *per* section 117(8)(b)) or,
- (b) if Cst. ■ accepts a prehearing conference, section 120(6) of the *Police Act*.

115. Pursuant to section 119, at a disciplinary hearing, Cst. ■ 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.

116. Section 118(1) of the *Police Act* provides that a discipline hearing concerning the substantiated misconduct allegations must be convened within 40 business days of notice of this decision. That date is July 13, 2021

117. A pre-hearing conference call will be convened by telephone June 4, 2021 at 9:30 am with Cst. ■ 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.

118. In the event that date is unsuitable to Cst. ■ or his counsel, such party will advise the Registrar immediately and provide an indication of available dates and times for a conference call to be convened within the overall time frame noted above.



Brian M. Neal, Q.C.(rt)  
Retired Judge  
Adjudicator  
May 17, 2021  
Victoria, B.C.



---