

**IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367, SECTION 141,
AND THE MATTER OF THE REVIEW ON THE RECORD
INTO THE ORDERED INVESTIGATION AGAINST
CONSTABLE ARMINDER GILL
OF THE VANCOUVER POLICE DEPARTMENT**

NOTICE OF ADJUDICATOR'S DECISION

- TO: Constable Arminder Gill (#2550), Member
c/o Vancouver Police Department
Professional Standards Section
- AND TO: M. Kevin Woodall, Counsel for the Member
- AND TO: Superintendent Don Chapman
c/o Vancouver Police Department
Professional Standards Section
- AND TO: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section
- AND TO: Mr. Clayton Pecknold, Police Complaint Commissioner
Office of the Police Complaint Commissioner
- AND TO: Mark G. Underhill KC and Kate R. Phipps
Counsel for the Commissioner

Introduction

1. This is a Review on the Record pursuant to s. 141 of the *Police Act*, R.S.B.C. 1996, c. 367 [the Act] ordered by Mr. Clayton Pecknold, the Police Complaint Commissioner [the Commissioner], in relation to a proposed penalty for misconduct committed by Constable Arminder Gill [the Member]. A proposed penalty resulting from a pre-hearing conference pursuant to s. 120 of the Act only becomes the final resolution of the matter on approval of the police complaint commissioner in accordance with s. 120(16).
2. In this instance the Commissioner withheld his approval of the proposed disciplinary measure of a verbal reprimand for the Member's disciplinary breach of public trust by Abuse of Authority relating to Member's use of unnecessary force on a person during the performance of his duty. This occurred on November 13, 2019, when the Member was searching a male suspect incident to arrest. The Member delivered one slap to the suspect's face immediately after he was pricked by an uncapped syringe when the suspect had just denied having anything sharp in his possession. The Member has admitted his misconduct, as defined in s. 77(3)(a)(ii)(A) of the Act.
3. These are the reasons for my decision in this matter in accordance with s. 141(11).

The Issues to be Decided

4. The issues to be decided on this Review on the Record are:
 - (1) Does the standard of review permit deference to the determination by the adjudicator at the disciplinary hearing as to the disciplinary or corrective measure to be imposed on the Member?
 - (2) If not, and the governing standard of the Review on the Record is correctness, what is the appropriate disciplinary measure in this case?

The Statutory Provisions Applicable to this Review on the Record under the Act

5. The Commissioner ordered this Review on the Record on his own initiative pursuant to s. 138(1)(b) of the Act.
6. Section 138(1)(c) states:

...the police complaint commissioner must arrange a public hearing or a review on the record if the police complaint commissioner:

- (c) considers that there is a reasonable basis to believe that
 - (i) the discipline authority's findings under section 125 (1) (a) [*conclusion of discipline proceeding*] are incorrect, or
 - (ii) the discipline authority has incorrectly applied section 126 [*imposition of disciplinary or corrective measures*] in proposing disciplinary or corrective measures under section 128 (1) [*disciplinary disposition record*], or
- (d) otherwise considers that a public hearing or review on the record is necessary in the public interest. (Emphasis added.)

7. In relation to a review on the record, s. 141(1) of the Act defines “disciplinary decision” in relation to a discipline proceeding under s. 124 to include any of the matters described in s. 133(a)(i) to (iv) [a review of disciplinary proceedings], and any further reasons provided under s. 128(3) [a disciplinary disposition record].
8. Section 141(3) of the Act states:

For the purposes of a review on the record, the record of a disciplinary decision consists of

 - (a) the final investigation report of the investigating officer, any supplementary reports or investigation reports under section 132 [adjournment of discipline proceeding for further investigation] and all records related to the investigation and the discipline proceeding,
 - (b) the records referred to in section 128(1) [disciplinary disposition record],
 - (c) the report referred to in section 133(1)(a) [review of discipline proceedings], and
 - (d) in the case of a review on the record initiated under section 139 [reconsideration on new evidence], any record relating to the new evidence referred to in that section.
9. Section 141(4) permits the adjudicator on the review to admit evidence that is not part of the record of the disciplinary decision under review, and is not part of the member’s service record “if the adjudicator considers that there are special circumstances and it is necessary and appropriate to do so”.
10. Fundamentally important to the task of an adjudicator on a review on the record is the standard of review, as stated s. 141(9):

In a review proceeding under this section, the standard of review to be applied by an adjudicator to a disciplinary decision is correctness.

(Emphasis added.)

11. In the context of this Review, which focuses on the disciplinary or corrective measures to be taken in relation to the Member, upon concluding the Review the adjudicator “must” determine the appropriate disciplinary or corrective measures to be taken in relation to the Member (s. 141(10)(b)).
12. It is also open to an adjudicator under s. 141(11)(c) to “recommend to a chief constable or the board of a municipal police department any changes in policy or practice that the adjudicator considers advisable in respect of the matter.”

Notice of Review on the Record

The Investigation of the Complaint

13. The Office of the Police Complaint Commissioner [OPCC] received a request for an ordered investigation from the Vancouver Police Department [VPD] in relation to the incident on December 19, 2020. The incident involving the Member that resulted in the complaint occurred on November 13, 2019.
14. The VPD had received a video recording that showed the Member striking a male across the face during the arrest and search of the male in a parkade located in the Downtown Eastside of Vancouver.
15. At the request of the VPD the New Westminister Police Department initiated a criminal investigation into the Member’s conduct. After reviewing the information provided, the Commissioner initiated an investigation under s. 93(1) of the Act, which was then suspended pending the completion of the criminal investigation or prosecution. The Member was charged with one count of assault contrary to s. 266 of the *Criminal Code*.
16. On July 12, 2021, the suspension of the complaint proceedings was lifted on request of the Member’s counsel. VPD Professional Standards investigator, Sgt. Stan Dy conducted the investigation and submitted his Final Investigation Report [FIR] to the Discipline Authority, Inspector Mike Kim, on January 10, 2022.

17. In the intervening period, on October 27, 2021, the Member entered a guilty plea to one count of assault. He received a conditional discharge accompanied by a term of probation for six months, which required him to keep the peace and be of good behaviour, and to complete 50 hours of community work service.
18. On January 24, 2022, having completed his review of the FIR, Inspector Mike Kim as the Discipline Authority found that the misconduct of Abuse of Authority, pursuant to s. 77(3)(a)(ii)(A) of the Act, appeared to be substantiated, whereas the allegation of a Public Trust offence was not substantiated, the latter matter having been concluded by the OPCC.
19. The Member accepted the offer of a Prehearing Conference, which was convened before Inspector Kim on February 16, 2022.
20. On March 2, 2022, the Commissioner rejected the Prehearing Conference agreement, and the matter then proceeded to a Disciplinary Hearing before Superintendent Don Chapman as the new Disciplinary Authority.
21. On May 3, 2022, following the Discipline Proceeding, and after considering the available evidence and submissions, the Discipline Authority, Superintendent Chapman, determined that the Member had committed the misconduct of Abuse of Authority pursuant to s. 77(3)(a)(ii)(A) of the Act when he slapped a male suspect in the face immediately after being pricked with a hypodermic needle during the course of a breach of probation investigation. The Member had again admitted the misconduct. The Proposed Disciplinary measure, considered to be appropriate by Superintendent Chapman, was a verbal reprimand.

The Commissioner's Decision

22. The Commissioner indicated in the Notice that he had reviewed the record of the Disciplinary Decision, made the associated determinations pursuant to s. 138, and concluded that he agreed "with the Discipline Authority's determination as to whether misconduct has been proven is correct", in keeping with s. 125(1) of the Act.

23. However, the Commissioner concluded that “there is a reasonable basis to believe that the Discipline Authority has incorrectly applied section 126 of the Act in proposing disciplinary or corrective measures in this matter.” In particular, the Commissioner concluded that “there is a reasonable basis to believe that the Discipline Authority has incorrectly applied section 126 of the Act in proposing disciplinary or corrective measures in this matter.” Specifically, the Commissioner wrote (at p. 3 of the Notice):

...I have determined that there is a reasonable basis to believe that the disciplinary or corrective measure proposed does not adequately address the seriousness of Constable Gill’s conduct, which includes an unprovoked assault on a person in his custody to which Constable Gill pled guilty on a subsequent assault charge. Furthermore, it appears that the Discipline Authority has not accorded sufficient weight to the aggravating factors in proposing the disciplinary or corrective measure of a verbal reprimand, including that Constable Gill made a threatening comment toward the male after the assault, and that Constable Gill only self-reported the incident one-year later after he became aware that this incident had been videotaped and was being circulated on social media.

24. The Commissioner stated (at p. 4 of the Notice) that “the Review on the Record will be confined to the issue of disciplinary or corrective measures.”

The Facts of the Incident Resulting in the Complaint

25. Drawing from the Disciplinary Disposition Record, and the FIR, which includes a voluntary statement by Member to Sgt. Dy, the following is a summary of the relevant facts.

26. On November 13, 2019, the Member responded to a report of a suspicious male and a possible break and enter in an underground parkade at the International Village Mall at 88 West Pender St. in the downtown eastside of Vancouver. Security at the mall had contacted the police after they had apparently observed the male

crawling into vent in the parkade. The Member and another constable attended and identified the male, who they arrested for breaching the conditions of a probation order.

27. The Member asked the suspect if he had anything sharp in his pockets. The Member proceeded to search the suspect, who was not handcuffed, and the Member pricked his finger on an uncapped hypodermic needle in the suspect's back pocket.
28. The Member reacted by slapping the suspect in the face with the back of his right hand. The Member apologized and indicated to the suspect that he should not have slapped him.
29. One of the security guards captured the incident on video. In the video the Member is seen to slap the suspect and then to have a verbal exchange with the suspect after slapping him, during which the Member asked the male if he has anything else sharp in his pockets. The male responded, "No", to which the Member said words to the effect that if he did, the Member would "F---ing knock your teeth out."
30. On December 8, 2020, just over a year later, the Member advised officers in the VPD Professional Standards Section that he had received a video of himself slapping the face of a male he was arresting during a search. He turned the video over to Professional Standards. This set the wheels in motion for the VPD complaint to the OPCC and an external criminal investigation by the New Westminster Police Department. As indicated previously, the Member pleaded guilty plea to one count of assault and received a conditional discharge, accompanied by term of probation for six months, and 50 hours of community work service.
31. In the FIR Sgt. Dy set out additional facts as determined by his interviewing of witnesses, including the Member and others present, namely the suspect who was the victim of the assault, three police officers, and the two security guards who called the police, one of whom took the video.
32. In his statement, the suspect said he had entered an exterior vent from the street and was arrested by Cst. Gill. Certain aspects of his account are inconsistent with the statements of those present and with the video, namely that: he was in handcuffs when the Member started going through his pockets; he told Cst. Gill he

had a lot of stuff in his pockets, including needles; then Cst. Gill grabbed a needle from his pocket and said, "What the fuck, man?" and "cracked" him on the head. The suspect then said the "crack" was one punch in the face. According to the suspect, further words were then exchanged between the two.

33. One of the security officers had used his cell phone to video the interaction between the suspect and the Member, and witnessed the Member slap the suspect in the face. He sent the video to some of his co-workers on a group chat.
34. The Member stated that on November 13, 2019, he was working in plainclothes with Cst. Grewal. They attended the call at 88 West Pender at 2228 hours in relation to an incident in the parkade reported by security. He approached the suspect and arrested him for breaching his conditions. Cst. Grewal recalled two further officers attended to provide cover. Cst. Grewal observed the Member search the suspect who was not handcuffed at this time. She heard the Member ask the suspect if he had anything sharp or weapons, and she believed the suspect did not reply.
35. During the Member's search of the suspect, Cst. Grewal said that the Member's reaction was consistent with being poked by something or touching something sharp on the suspect's person. Cst. Grewal said she observed the Member "slap" the suspect in the face, but as it happened so fast she could not confirm whether he used the front or back of his hand. She then heard the Member say to the suspect, "You said you did not have anything sharp".
36. Cst. Grewal recalled that after the incident she recalled the Member having a conversation with the suspect at which time he apologized, and the suspect, in turn, apologized to the Member for forgetting that he had something sharp on him. The suspect was then transported to jail.
37. Cst. Quach was one of the two uniformed officers that arrived as back up to the Member and Cst. Grewal, the other being Cst. Orahim. In her statement Cst. Quach's said that she was standing directly behind the Member as he talked with the suspect. Cst. Quach remembered the Member and Cst. Orahim searching the suspect. She also recalled the response of the Member when he remarked that he had found something sharp. Cst. Quach believed that the Member had a knee-jerk

reaction when he backhanded the suspect. Cst. Quach did not see where the blow landed. When the Member made the decision to handcuff the suspect, she moved in to assist. She recalled the suspect telling the Member that he was sorry and that he did not know it was there. Cst. Quach did not see the item that caused the Member's reaction.

38. In his statement, Cst. Orahim said that his focus was searching the suspect's jacket thoroughly as he was new to policing. At some point he heard a sound that sounded like a "clap" which caught his attention, and when he turned around, he noticed a heightened sense of tension between the Member and the suspect. He did not know exactly what had occurred and he moved in to help the Member, recalling that he grabbed the suspect's left arm. Cst. Orahim did not recall if the suspect was handcuffed at this time.
39. In the Member's voluntary statement to Sgt. Dy, he recounted that in searching the suspect incident to arrest, he asked him if he had anything sharp on his person. The suspect replied that he did not, and when the Member went to search the suspect's back pocket, he was poked by something he believed to be a needle. The Member said that he responded to the poke and slapped the male in the face. The Member said that he was wearing latex gloves and the poke did not break or penetrate the glove.
40. Subsequently, the Member learned that the item inside the suspect's pocket was an uncapped needle. The Member stated that he apologized to the suspect before he was transported to jail. The Member said that he first received the video from a co-worker and upon viewing it, he reported the incident to the VPD. The Member detailed his work history, including exposures that he had previously to needles, and experiences that his co-workers had upon being poked or stabbed.
41. Sgt. Dy reviewed all of the Member's training records and reported that it appeared that the Member "has completed or signed off as completing all of the necessary training and crisis intervention certification."
42. In the course of his investigation Sgt. Dy viewed the video, as have I.
43. In the FIR (at p. 48) Sgt. Dy describes it accurately. It appears to have been taken with a cell phone and depicts a level of the parkade. It shows the plainclothes

officers, the Member and Cst. Grewal, standing with the suspect, who is not in handcuffs. Cst. Quach is shown standing four to five feet from the Member, and Cst. Orahim is standing behind the suspect. The video then moves in on the officers and the suspect, and the Member is shown delivering a back hand or a palm slap to the suspect's face. The sound heard is consistent with a slap.

The Criminal Investigation and the Member's Guilty Plea to One Count of Assault

44. In the FIR Sgt. Dy indicated that he had reviewed the results of the New Westminster Police investigation in relation to this incident. He noted that the Member cooperated throughout the investigation, provided voluntary statements about the incident, and admitted to striking the suspect one time as a knee-jerk reaction to getting poked by an uncapped needle.
45. Sgt. Dy also reported that on October 27, 2021, the Member pleaded guilty to one count of assault and received a conditional discharge accompanied by six months' probation and 50 hours of community work service.
46. The Member was sentenced by the Honourable Regional Administrative Judge Hamilton of the Provincial Court at 222 Main St. in Vancouver.
47. Hamilton PCJ started his Reasons for Sentence [at para. 4] by recognizing that offences committed by police officers are serious, because when police officers are acting in their line of duty, they have considerable power and authority. Members of the public are compelled by that power and authority when they engage with the police, and most, but not all, follow the directions given by the police.
48. Judge Hamilton stated, when a police officer in that position commits an offence against a member of the public, "the community is, I think, understandably, outraged." He continued, "There is always going to be a context, and so when imposing a sentence on any individual case, context is very important."
49. In terms of his assessment of the context in this case, Judge Hamilton stated the following:
- [9] The Crown says that this was a gratuitous act of violence. I am not so sure the facts support a finding that this was a gratuitous act of violence. Given the whole context where Cst. Gill asks Mr. Raisanen if he has anything sharp in his pockets, giving Mr. Raisanen an opportunity to take

those sharp objects out, and Cst. Gill being told, no, there is nothing sharp in my pockets, and then Cst. Gill searching him and finding a needle in his pockets, in my view, reduces the moral culpability of Cst. Gill reacting the way he did.

[...]

[11] This was I think more of a frustrated officer who had given Mr. Raisanen an opportunity to empty his pockets of sharp objects, or things that could hurt Cst. Gill or the other officers there. Then after being told there was nothing sharp in his pockets, Cst. Gill searched the gentleman and found this sharp needle in his pocket. The result of that, I think, was both surprise, frustration, and probably a certain amount of anger that Mr. Raisanen said he did not have anything sharp in his pocket. Now, it was not sort of an innocent sharp object, it was a needle in the pocket of someone on the Downtown Eastside which comes with a whole host of potentially negative consequences for the officer. His reaction was a criminal offence. He has acknowledged that by entering a guilty plea.

50. In considering whether it was appropriate to grant a conditional discharge Judge Hamilton considered the legal requirements as to whether it was in the best interests of the accused and not contrary to the public interest to do so (s. 730(1) of the *Criminal Code*). He found that it was clearly in the Member's best interests to grant him a conditional discharge in view of the fact that the Member is "a veteran police officer, and a well-respected police officer. And anything greater than a discharge would result in him having a criminal record which could have far-reaching consequences for his professional career" [at para. 12].
51. In assessing the public interest [at para. 13], Judge Hamilton took into account that the Member acknowledged his guilt from the outset, and then entered a guilty plea, thus sparing the public the cost of taking this matter to trial. Judge Hamilton also acknowledged that the public has an interest in ensuring that police officers operate within the corners of the law, and while the Member did not, he admitted his guilt.
52. In assessing the negative consequences for the Member as a result of his unlawful conduct resulting in a plea of guilt to the criminal offence of assault, the Judge referred to the fact that the video of Cst. Gill slapping the suspect was apparently available on the Internet and was likely to remain there for anyone who wished to

view it. He referred to the fact that the Member's reputation among some of his police colleagues may have suffered due to his conduct in relation to this incident.

53. Judge Hamilton also stated [at para. 15] that "In addition to all that, Cst. Gill is going to be facing disciplinary proceedings under the *Police Act*. He concluded this portion of the sentencing remarks with the following: "It is my view that society, at least a well-informed member of society, knowing all of what I have said, knowing that Cst. Gill still faces further disciplinary proceedings under the *Police Act*, that member of society would, if not endorse, accept that a conditional discharge is an appropriate disposition in this case.

54. Judge Hamilton decided that probation for six months was appropriate, during which time the Member was to complete 50 hours of community work service, which he directed be spent for the benefit of volunteer organizations, charity organizations, food banks, or any other charitable organization as directed by the probation officer. In this regard, the Judge commented [at p. 19], "I think if Cst. Gill takes 50 hours of his free time and contributes that to any of those charitable organizations, he will have significantly repaid his debt to society for having slapped Mr. Raisanen on November 13, 2019."

The Application of Behalf of the Member for the Admission of New Evidence

55. Prior to the oral hearing, counsel for the Member brought an application pursuant to s. 141(4) to introduce evidence into this Review that is not part of the FIR or otherwise contained in the record. The materials that he asked to be considered for admission were (a) Performance Records of the Member, (b) Letters of support from colleagues, and (c) Google search results, to show the negative impact the criminal proceedings have had on the Member and his family.

56. Section 141(4), as referred to above, permits the adjudicator on the review to admit evidence that is not part of the record of the disciplinary decision concerned and is not part of the member's service record "if the adjudicator considers that there are special circumstances and it is necessary and appropriate to do so".

57. In support of his application, counsel for the Member made the following points:

- As this matter proceeded to a prehearing conference with a Prehearing Conference Agreement before a police officer in the same police department as the Member, the officer could well have been aware of the Member's workplace reputation; thus it may not have been necessary to bring forward reports and letters to establish facts that the Prehearing Conference Authority was already aware of.
- The materials were filed as Exhibit 4 at the sentencing proceeding held in Provincial Court on October 27, 2021. However, they did not become part of the record at the Prehearing Conference before Inspector Kim, or the Disciplinary Hearing held before Superintendent Chapman, also with the VPD.
- The Member was represented by a union agent on these occasions, not his counsel at the criminal proceedings.
- Given the position taken by Counsel for the Commissioner in this proceeding that the Adjudicator should consider the imposition of discipline or corrective measures *de novo*, the materials are relevant and provide personal information about the Member's workplace performance and reputation. They are the kind of materials routinely accepted in *Police Act* matters and sentencing proceedings.
- Given the routine nature of the materials, it is unclear how their admission would prejudice the Commissioner.

58. In responding to the application, counsel for the Commissioner argues that there are no special circumstances here, neither is the proposed evidence necessary to be admitted. In particular, their submissions include the following:

- Much of the evidence sought to be admitted existed and was relied on at the criminal sentencing, and no reason has been provided as to why the Member could not have relied on the same evidence at the disciplinary hearing.
- The fact that the Prehearing Conference Authority and the Discipline Authority were police officers in the same department as the Member is the norm, as opposed to a special circumstance.

- It was incumbent for the Member to put forward all the evidence he considered to be relevant at the first hearing, as opposed to having his agent make an argument at the Disciplinary Hearing that deference should be afforded to the Proposed Disciplinary Measure from the Prehearing Conference that was not accepted by the Commissioner.
- The service record of a member, as defined in s. 180 of the Act, contains much information about their performance, including records of complaints against the member, the record of any investigations, the records of disciplinary or corrective measures taken in respect of the member, records of any initiated investigation, and all decisions and resolutions in respect of that member. Therefore, the materials listed in s. 141(3), which include the FIR and a member's service record, are sufficient.

59. Having considered the submissions of the parties, I have decided that performance records of the Member and the letters of reference from his colleagues at work are relevant to this Review, and as such they are "necessary and appropriate" to be admitted into the body of evidence to be considered on this Review on the Record.

60. With regard to the criterion of "special circumstances", I note it is the position taken on behalf of the Commissioner that this Review on the Record is to be conducted with a standard of review of correctness in accordance with the clear language contained in s. 141(9). In this case counsel for both parties referred to the criminal proceedings. The Performance Reviews and the letters of reference were before the Provincial Court Judge at the sentencing proceedings. My task is to conduct a *de novo* review and to determine a "just and appropriate disciplinary or corrective measure" in this case. I find that "special circumstances" exist in relation to these materials as the Performance Reviews and the letters of reference are highly relevant to this determination and unfairness would result without this additional evidence regarding the Member.

61. To the extent that hindsight may show a degree of naivety as to the fate of the Proposed Disciplinary Measure at the Preconference Hearing or in front of the Disciplinary Authority, such that this evidence was not proffered, I would simply caution others to ensure in the future that complete filings are made on their behalf

in the event that the proposed disciplinary measure is later not approved by the Commissioner, giving rise to subsequent proceedings.

62. However, I take a very different view of the material counsel for the Member seeks to file with regard to the video of the incident depicting the Member's assault of the suspect, which is reported to be available on the Internet. To my mind the number of times it has been viewed and/or the comments it may have generated do not add anything relevant to the record here. I find that Judge Hamilton said all that needs to be said about the negative consequences for the Member regarding the video being available on the Internet (at para.14 of the Reasons for Sentence), when he stated, "Cst. Gill will never be able to turn off that internet source of information about what he did in this case."
63. Therefore, I find it is not "necessary and appropriate" for the evidence about the dissemination of the video on the Internet to be admitted.
64. Regarding the application by counsel for the Member that additional evidence be admitted on this Review, I find that (a) Performance Records of the Member, and (b) letters of support from colleagues are admitted as new evidence, pursuant to s. 141(4) of the Act; and that (c) the Google search results are not admitted.

Issue 1: Standard of Review to be Applied – Section 141(9)

65. The intent of the Legislature as to the standard of review in this proceeding is clear. An adjudicator reviewing a disciplinary decision is to evaluate that decision on the basis of its correctness: section 141(9) of the Act.
66. In dealing with the various standards of judicial review, with a focus on the patent unreasonableness standard and the reasonableness standard, the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, Justices Bastarache and LeBel writing for the majority, commented on the correctness standard:
- [50] [...] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not the court will substitute its own view and provide the correct

answer. From the outset the court must ask whether the tribunal's decision was correct.

67. In a subsequent decision, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the majority reasons of the Supreme Court of Canada provide further guidance with regard to the standard of correctness and the concept of deference for the administrative decision maker's determination:

[54] When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: *Dunsmuir*, at para.50. While it should take the administrative decision maker's reasoning into account – and indeed, it may find that reasoning persuasive and adopt it – the reviewing court is ultimately empowered to come to its own conclusions on the question.

68. Therefore, a review on the record under s. 141 of the Act requires the adjudicator to conduct the review to a standard of correctness, which requires the adjudicator to conduct a new review of the record and come to his or her determination of correctness without according deference to the prior determination. This means that I am to carefully analyze all the evidence and come to my own conclusion in this case as to an appropriate disciplinary or corrective measure.

69. I note that adjudicators in other reviews on the record decisions have come to the same conclusion: OPCC File No. 21-19722; OPCC File No. 2021-19733; and OPCC File No. 2017-13521.

70. Counsel for the Member relied on OPCC File No. 2017-14260 [the *McCluskie* decision] of Retired Judge Baird Ellan for the propositions that deference ought to be afforded to the adjudicator's disciplinary disposition decision if it is in the range of dispositions in similar cases; and akin to a criminal appeal, deference may be given to the decision of the sentencing judge if it is within the range for a particular offence, and minor adjustments or "tinkering" with the penalty imposed was generally to be avoided.

71. In her thorough reasons the learned retired judge sought to apply the contextual analysis set out in the *Dunsmuir* case, which addressed the patent unreasonableness/reasonableness *simpliciter* distinction, and determined that there

ought to be only two standards of review: correctness and reasonableness, the latter accommodating deference.

72. At para. 48 of *McCluskie* Retired Judge Baird Ellan stated, “Considering the question of correctness in this context in light of the above case law regarding reviews of penalty decisions and relative expertise, I do not see it as requiring an unaltered application of the *Dunsmuir* standard of fresh consideration.” Then, at para. 49 she stated, “To some extent, the assessment of the applicable standard will depend upon the question that is engaged on the ordered review.” Retired Judge Baird Ellan concluded:

[52] In the final analysis, my view is that the applicable standard may vary depending on which aspect of s. 126 is in question. The further the required analysis moves from considerations of internal policing administration issues and the more the public interest is engaged, the less likely deference will be required.

73. The *McCluskie* decision was released about seven months before the Supreme Court of Canada in *Vavilov*, revised the analysis for determining the standard of review, starting with an overall presumption of the reasonableness standard, and establishing a different framework that no longer required the courts to engage in a contextual inquiry in order to identify the appropriate standard.

74. The Supreme Court of Canada in *Vavilov* also stressed the importance of the legislative language that establishes the regulatory framework, particularly when the statute specifies the applicable standard of review, which is what one finds in s. 141(9) of the Act that specifies the correctness standard.

75. Thus, any ambiguity as the correct standard of review on matters of disciplinary or corrective measures in s. 126 of the Act has been removed. The standard of review is correctness on all issues and the analysis of Retired Judge Baird Ellan in *McCluskie* as to varying standards of review for particular determinations under s. 126 is no longer of assistance due to changes in the law.

76. A reasonableness standard accommodates deference for the decision being reviewed, whereas the correctness standard requires a *de novo* analysis.

77. Therefore, I find that I must conduct a *de novo* analysis in relation to what constitutes a “just and appropriate disciplinary or corrective measure” in relation to the Member’s misconduct.

The Imposition of Disciplinary or Corrective Measures – s. 126

78. Section 126 of the Act sets out the range of disciplinary or corrective measures and the aggravating and mitigating circumstances I am to consider when determining the just and appropriate measure in this instance:

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [*complainant's right to make submissions*], the discipline authority must, subject to this section and sections 141 (10) [*review on the record*] and 143 (9) [*public hearing*], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,
- (b) the member's record of employment as a member, including, without limitation, her or his service record of

discipline, if any, and any other current record concerning past misconduct,

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,

(d) the likelihood of future misconduct by the member,

(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,

(f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,

(g) the range of disciplinary or corrective measures taken in similar circumstances, and

(h) other aggravating or mitigating factors.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute. (Emphasis added.)

The New Evidence

79. The new evidence in this matter discloses that the Member is not merely a long-serving member of the VPD, but an officer of the highest caliber, who is highly skilled in dealing with complex investigations, someone with recognized leadership abilities and experience, a person known to “go the extra mile” to fulfill his policing responsibilities. He is known for being calm in difficult situations and not to have used excessive force in relation to persons he has dealt with in his professional capacity.

80. The material in evidence consists of the Member’s Performance Appraisals for the years 2016, 2017, 2019, and 2020. It also contains letters of reference and support from six sergeants, three of whom are staff sergeants, and a letter from a detective constable who works with the Member as his partner in the Major Crime Section of the VPD. This material portrays the Member as an exemplary police officer. It is marked as an exhibit in this proceeding.

81. I will extract brief portions to convey some of its contents and tone:

- Det Cst Gill shows good judgement on a regular basis and brings strong problem-solving skills to Strike Force. Every member of Strike Force is called upon to make very important decision [sic] on a daily basis which contribute to the overall effectiveness of the team. Det Cst Gill models this and is humble enough to admit to his peers when things could have been improved. (Performance Review 2017, p.3)
- This was arrest day for a homicide suspect ... Det Cst Gill was the Road Boss on this day and had to work with investigators in order to engineer an arrest of the suspect once he went mobile and his identity was confirmed. Det Gill had to ensure that the location was safe for the arrest and that the suspect could not get away. Plain clothes investigators were performing the arrest so the need for close surveillance support was paramount. Det Cst Gill did a great job of problem solving this day. (Performance Review 2017, p. 4)
- Cst Gill was the lead instructor on the Spring 2018 Star Course. As the lead instructor he facilitated and organized the course which consisted of ten students. As well Cst Gill had 8 instructors assigned to the course to assist him. Cst Gill defined tasks for each instructor and ensured everyone was doing their fair share of the work. [...] (Performance Review 2018, p. 2, under "Coaching")
- I have had the pleasure of working with Cst Gill since September 2018. I am confident in my observations of Cst Gill. I have found him to be extremely conscientious about the personal and professional well-being of the members on his team. He knows all of them well; their strengths, weaknesses, challenges, aspirations, and areas where growth is required. As a result [of] his genuine caring he is well respected by his team. He advocates well on their behalf and works hard to ensure that new members destine[d] for his team share similar values and work ethic. I have read many GO's he's investigated or been part of and can confidently state that Cst Gill is a strong investigator always ensuring files are fully and completely investigated and employing the best practices to ensure success. I have heard anecdotal stories from members and peers. From these observations, all consistently flattering, I'm confident that Cst Gill exercises sound and decisive decision making and while Acting Sergeant and have received feedback from supervisors attesting to his leadership abilities. In all of my interactions and observations Cst Gill has displayed strong oral and written communication skills. He is clear, concise and well thought out.

Cst Gill is a strong and valued leader in the district and whose leadership qualities, work ethic and job knowledge benefit all of those around him. He will be an asset to any section he may find himself working in. (Performance Review 2019, p. 3)

- I have worked with Arminder Gill since 2006 and was his direct supervisor from 200-2011 while he worked as a Patrol Officer in District Four of the VPD Patrol Division.

I am aware he is currently charged with an assault and find this out of character for the person I have known for the past 15 years.

During his time under my supervision I attended many police calls with Arminder and was able to observe him under many unique and stressful situations. Arminder was always calm, professional, respectful and compassionate when dealing with the public. This demeanor included not only victims of crime but persons he had arrested for committing crimes. At no time during my time as Arminder's direct Supervisor have I ever seen him use excessive force on my person nor did I see any behaviour other than what was expected of him.

It is my opinion this current circumstance is more likely a defensive reflex action that is highly out of character for a person of such calm demeanor. In discussing this incident with Arminder he has expressed great remorse for his momentary lapse of judgment.

Arminder is a highly skilled police officer and I would have no reservations working with him again in the future. (Sgt. Brad Brewer)

- In March, 2021, I assumed supervision of the RAAU Team 4 to which Detective Constable Gill was assigned. Shortly after my arrival, we met in private whereupon he divulged his circumstance and that he was cooperating with authorities and taking full responsibility for his conduct. He confided that his actions were a momentary lapse in judgement, and that he truly regretted his behaviour and felt mortified by his treatment of the affected person and the potential tarnish he had smeared on the reputation of the Vancouver Police Department. While speaking with him, listening to his words and observing his body language, it was readily apparent that he felt deep and genuine remorse for his behaviour.

Since our first meeting, he has continued to update me as to his legal proceedings and throughout, has accepted his moral obligations without resentment or cynicism. He is a senior and seasoned investigator on the team, and at all times, has treated fellow officers and members of the public with respect and dignity. No matter how intense or exhausting a situation

may be, he remains stoic, soft spoken and even tempered. I have never heard of, or witnessed, him in a state of perturbation let alone frustration or anger. I have the utmost trust in his competence and professionalism, so much so, that I rely on him to supervise and manage the team when I'm unavailable. He is respected and well regarded by all his peers, myself and fellow supervisors. Detective Constable Gill exemplifies all that is good and honourable in the profession of policing. Without reservation, I can state emphatically that I am proud to work with him, and that he is an invaluable asset to the Vancouver Police Department and to the citizens of the City of Vancouver. (Sergeant Shane Aitken, 22 year VPD member, Sgt. in the Major Crime Section, Robbery/Assault/Arson Unit)

- I have known Constable Arminster Gill since 2011, when he obtained a position in the Strike Force. [...] The time we spent together provided me an opportunity [to] observe and assess his character. I grew to know him as an intelligent, calm, thoughtful individual who was a compelling and decisive leader. Due to his character, I continued to rely on Constable Gill throughout the years. [...] More recently, I learned that Constable Gill plead guilty to an assault that occurred while on duty. I am aware of the general circumstances of the incident and believe that Constable Gill's reactions were inconsistent with the person he is. Constable Gill has always treated people with the utmost respect, and I firmly believe that his actions were a momentary lapse in judgement, not reflective of his true character.
His strength of character was apparent when he plead[ed] guilty, accepting accountability for his actions. As a police officer, I understand the professional magnitude of bearing a criminal conviction. We are held to a higher standard and circumstances such as this often result in professional and public censure. Constable Gill will be held accountable for his actions for years to come. His conviction will be brought to light every time he is required to provide McNeil disclosure in Court or some conducts an Internet search in his name. Understanding these consequences, he did not hesitate in accepting responsibility for his actions and was unflinching in the face of potential repercussions. The manner in which he took accountability is a testament to the man he is. Watching him navigate this process has only increased my respect and admiration for him.
I firmly believe this will be a singular lapse in an otherwise distinguished career. (Sgt. Travis Fraser, VPD)
- [...] Nor has Armi [the Member] displayed a loss of temper in my presence, professionally and socially, including working in situations where protestors

and suspects have used racial slurs against him in an attempt to provoke him. Armi is sought after within the VPD as his reputation is that of a dedicated police officer, diligent worker and an accountable colleague. I am aware from knowing Armi socially that he is also a dedicated father and member of his community, and it seems that almost daily he leaves work to go spend his free time assisting and helping his friends and family. (Det. Cst. Conrad Nemeth, VPD Major Crime Section)

- I am aware of the fact that Constable Gill is being charged with assault because Constable Gill first contacted me about the situation and told me he was going to bring the incident forward because he felt bad about what he did. He did not want this to affect the VPD's reputation. This whole incident is totally out of character for Constable Gill and it has been my experience that Constable Gill goes out of his way to help people not hurt them. I believe that Constable Gill's character is revealed in how he has handled this situation. (Staff Sgt. Marco Veronesi, VPD)
- Two further letters, one from Staff Sgt. Mark Bragagnolo, VPD Major Crime Section, and one from Staff Sergeant Phillip Kubicsek, prior supervisor, VPD Strike Force, echoed the sentiments expressed in the other letters regarding Constable Gill.

Summary of Counsels' Submissions and Their Position

82. Counsel for the Commissioner submitted that an appropriate disciplinary disposition in this case, given certain aggravating factors, is a five-day suspension without pay. Counsel for the Member submitted that the proposed disciplinary measure of a verbal reprimand, as considered appropriate by Superintendent Chapman, ought to be imposed in this proceeding.

83. I have carefully considered counsels' submissions on all aspects of this matter and the authorities to which I have been referred. Both parties argued aspects of the aggravating and mitigating circumstances enumerated in s. 126 as set out above. I will address aspects of their submissions as I deal with the relevant circumstances in light of the facts as set out herein.

Issue 2: What is the Appropriate Disciplinary Measure in This Case?

84. In order to determine the just and appropriate disciplinary or corrective measure to be imposed in this case, I will now deal with the aggravating circumstances and mitigating circumstances set out in s. 126 of the Act, setting out my observations and findings.

85. First, in relation to the seriousness of the misconduct (s. 126(2)(a)):

- On its face the Member's unprovoked slap to the suspect's face is quite a serious matter. Any physical assault of a member of the public by an on-duty police officer is to be carefully scrutinized by discipline authorities because of the power and authority that society gives to the police to uphold and enforce the law. However, as with any incident of this sort it must be put in context.
- The context here is that the Member asked the suspect if he had anything sharp on his person prior to searching him, the suspect indicated that he did not, and then the Member encountered a sharp item in the suspect's right rear pocket. The Member's immediate response was to slap the suspect once on the face. The Member's reaction – partly a reaction to being poked with a sharp object and partly out of anger - is understandable, albeit highly inappropriate and unlawful.
- The suspect was not handcuffed at that time and did not sustain any observable injury to his face.
- The Member followed up the slap with words to the effect that he would knock the suspect's teeth out if it turned out the suspect had anything else sharp that he had not told the police about. My view, despite those words, the Member did not intend to do any such thing. Rather, he was just expressing his frustration and anger at the suspect, albeit in rough and impolite language. There is no indication in the reaction of the suspect that he considered himself likely to receive another blow.
- I agree with the finding of Judge Hamilton that the slap constituted "a minor assault in terms of its effect on the victim." The fact that the Crown and defence were agreed a conditional discharge was appropriate, and that the Judge accepted their submissions is consistent as to the nature of the

assault. The imposition of a conditional discharge found to be not contrary to public interest is significant.

- The video shows that the suspect did not exhibit physical signs indicative of a fear of a further assault. The slap did not put him off balance and he did not rub his face. In his later statement the suspect exaggerated certain things not depicted in the video, including that he was handcuffed at the time he was slapped, which is clearly not the case.
- The evidence I accept is that the Member quickly apologized, and the suspect also apologized for being wrong about the uncapped syringe in his back pocket.
- Therefore, I find this assault, prosecuted and to which Member pleaded guilty, is properly characterized as a minor criminal offence, which was dealt with by way of a conditional discharge, probation, and community work service hours.
- I do, however, find it aggravating that the Member behaved in this manner in front of other officers including a new recruit.
- With regard to the submission by counsel for the Commissioner that it is an aggravating circumstance that this Member's misconduct occurred in relation to a vulnerable person in the Downtown Eastside of Vancouver, my view is that most unfortunately, police officers in many places in BC encounter vulnerable drug-addicted persons. Rather, I find that the Member's misconduct occurred in relation to a vulnerable person who appears to have been using street drugs. It is this aspect I find aggravating.

86. In terms of mitigating circumstances, the evidence makes it very clear that the Member is an exemplary police officer in terms of how he performs his duties, deals with his colleagues, assists, and helps to advance officers who he is training, and has excellent communication and leadership skills. He has no history of misconduct as a police officer and glowing assessments and letters of reference from other officers who have known and worked with him for years. Under s. 126(2)(b), I regard this as a very significant circumstance in determining an appropriate disposition in this case.

87. Under s. 126(2)(c) I am to consider the impact of proposed disciplinary or corrective measures on the Member, his family, or his career. In the present case, I find that the impact of the criminal proceedings, specifically having to appear in a public criminal court and plead guilty to a criminal offence as a police officer has had a profound impact on the Member. In addition to the shame and remorse felt by this Member from the charge and having to attend court to plead guilty and be sentenced, he was subject to a probation order for six months and required to do 50 hours of community work service. It appears that the Member did as directed and successfully completed his community work service hours within the probationary term. The judge directed that the work service hours be with an agency likely to serve people in the Downtown East Side of Vancouver where this incident took place. One may reasonably ask, is this not enough in a case such as this?
88. Under s. 126(2)(d) I find that the Member is highly unlikely to engage in any future misconduct.
89. Much has been said about the Member not coming forward and reporting himself to Professional Standards prior to the video surfacing. It would have of course been better if he had. However, this incident offers a learning moment for all the officers present that they are to be held to the highest standard in terms of their on-duty behaviour. What is clear is that once the video surfaced the Member did the right and proper thing by taking it himself to Professional Standards and then admitting his conduct and his remorse at every step along the way. Under s.126(2)(e) I conclude that there is ample evidence that the Member accepts responsibility for his mistake, and if he needed to learn a lesson, it has been learned.
90. Section 126(2)(f) has no application here.
91. The range of disciplinary or corrective measures taken in similar circumstances (s. 126(2)(g)) is from a verbal reprimand to a suspension without pay for up to 10 days.

Determination as to Disciplinary or Corrective Measure

92. The misconduct admitted by the Member is Abuse of Authority pursuant to s. 77(3)(a)(ii)(A) of the Act, which is oppressive conduct towards a member of the

public, including, without limitation, intentionally or recklessly using unnecessary force on any person, specifically by slapping a male suspect in the face immediately after being pricked with a hypodermic needle during the course of a Breach of Probation investigation.

93. In considering what disciplinary or corrective measure are necessary in this case, I am obliged by s. 126(3) of the Act to adopt “an approach that seeks to correct and educate the member concerned” unless “it is unworkable or would bring the administration of police discipline into disrepute.”

94. In my view a reasonable member of the public, fully apprised of all the relevant circumstances of the criminal charge, the Member’s guilty plea, and the Court’s disposition, considered in conjunction with the Member’s admission of misconduct in these proceedings, his exemplary record of service as a police officer, his strong investigative, leadership, and management skills, and his workplace reputation, would not find the disposition of a verbal reprimand to bring the administration of police discipline into disrepute.

95. Therefore, I find the correct disposition here to be a verbal reprimand.

DATED at Kelowna, British Columbia, the 20th day of September, 2023.

The Honourable Elizabeth A. Arnold-Bailey
Adjudicator, Ret’d Justice BCSC