

**REVIEW ON THE RECORD
DECISION**

PURSUANT TO SECTION 141 *POLICE ACT*, R.S.B.C. 1996, c. 267

In the matter of a Review on the Record into
a Registered Complaint concerning

Sergeant Brian Gateley (#9982)
of the Organized Crime Agency of British Columbia

- To: Sergeant Brian Gateley, Organized Crime Agency of British Columbia,
Combined Forces Special Enforcement Unit-BC (the “Member”)
- And to: Mr. Clayton Pecknold, Police Complaint Commissioner (the
“Commissioner”)
- And to: Detective Glenn Marshall, Former Representative of the Member
- And to: Mr. Trevor Martin, Counsel to the Commissioner
- And to: Mr. David McKnight, Counsel to the Discipline Authority
- And to: Superintendent Don Chapman, Vancouver Police Department, Discipline
Authority
- And to: Assistant Commissioner Manny Mann, Combined Forces Special
Enforcement Unit - BC

Review submission dates: October 17 and 31, 2022, in writing

Decision date: December 9, 2022

Executive Summary

This Review has concluded that the decision of the Discipline Authority was incorrect.

The Member admitted to the misconduct of Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act*, R.S.B.C. 1996, c. 267 (the “*Police Act*”) which is when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, by communicating with a

witness in a homicide investigation in contravention of the direct orders from his superior officers and supervisors.

The decision was incorrect in relation to the imposition of disciplinary or corrective measures arising from the Member's admission to the disciplinary default pursuant to section 77(3)(h) of the *Police Act*.

The Review finds that the appropriate disciplinary or corrective measure is to reprimand the Member in writing pursuant to section 126(1)(i) of the *Police Act*.

Reasons for Decision

I. Overview and History of Proceedings:

- (1) On May 21, 2021, the Office of the Police Complaint Commissioner (the "OPCC") received information from the Combined Forces Special Enforcement Unit – British Columbia (CFSEU-BC) about an incident which was reported in the media on May 22, 2021. The information concerned the Member, a Sergeant with CFSEU-BC, working specifically within the Organized Crime Agency of BC ("OCABC").
- (2) A general summary of the incident is as follows:
 - (a) According to the CFSEU-BC, the Member's supervisors met with him on a number of occasions from approximately October 2020 to January 2021. These meetings focused on communication strategies for the homicide investigation surrounding the death of Arlene Westervelt and the Member's involvement in it.
 - (b) The Member was advised against participating in any media interviews and may have been directed to not to have contact with any witnesses from that investigation.
 - (c) In February 2021 the Member communicated by way of letter to Ms. Debbie Hennig, the sister of Ms. Westervelt.
- (3) Further details as to the incident described above will be discussed below.
- (4) On June 8, 2021 the OPCC reviewed the information provided by CFSEU-BC and determined that the Member's actions, if substantiated, would constitute misconduct and could be potentially defined as Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act*.
- (5) Sergeant Jen Daniel of the Vancouver Police Department's ("VPD") Professional Standards Section was assigned the ordered external investigation pursuant to section 93(1)(a) and (b)(ii) of the *Police Act*. Sgt. Daniel submitted her Final Investigative Report on December 8, 2021 (the "FIR") and recommended that the allegation of Discreditable Misconduct against the Member be substantiated.

- (6) On December 22, 2021, pursuant to section 112 of the *Police Act* Inspector Mike Ritchie of the VPD's Professional Standards Section, acting as the Discipline Authority, decided that the allegation of Discreditable Conduct had been substantiated at paragraphs 26 and 27. At paragraphs 18 and 19 of his report, Insp. Ritchie stated that he was satisfied that the Member knowingly mailed a letter to Ms. Hennig directly contravening the directions of his superiors, as he was desperate to have his version of events reach the family. He concluded that a police officer intentionally mailing a letter explaining his own involvement in a homicide investigation to the victim's family, in direct contravention of the orders of superior officers, would lead a reasonable and dispassionate member of the community having knowledge of all of the facts to conclude that his actions would bring or likely bring discredit to CFSEU-BC.
- (7) On January 26, 2022 Insp. Ritchie, pursuant to section 120(2) of the *Police Act*, conducted a confidential, without prejudice, prehearing conference with Sgt. Gateley. Through that process the Member accepted the disciplinary or corrective measure of a reprimand in writing (a "Written Reprimand") and Insp. Ritchie approved that measure for the allegation of Discreditable Conduct.
- (8) On February 3, 2022 the Commissioner rejected the resolution reached at the prehearing conference.
- (9) On February 7, 2022, pursuant to sections 123 and 134 of the *Police Act*, a Discipline Proceeding was commenced under Superintendent Don Chapman of the VPD as Discipline Authority.
- (10) The Discipline Proceeding was ultimately conducted on March 8, 2022. The Member admitted to the allegation of Discreditable Conduct. The Member also admitted the contents of the FIR and did not require the attendance of Sgt. Daniel as a witness in the Discipline Proceeding. The Member chose not to give evidence notwithstanding the fact that an adverse inference could be drawn from his failure to testify. Det. Marshall, a detective with CFSEU-BC, acted on behalf of the Member. Det. Marshall made oral submissions and provided written submissions as well. Det. Marshall argued that the Member had admitted the misconduct and, in good faith, accepted, at a prehearing conference, the agreed to penalty of a Written Reprimand.
- (11) On April 21, 2022 Supt. Chapman issued a Form 4, Disciplinary Disposition of Record pursuant to section 128(1)(b) of the *Police Act*. Supt. Chapman's role was to decide on appropriate discipline or corrective measures under section 126 of the *Police Act* as the Member had admitted to the allegation of Discreditable Conduct. Supt. Chapman concurred with Insp. Ritchie's analysis but felt that a Written Reprimand fell short in maintaining the public's confidence in the police disciplinary process and the high standard of conduct expected of members of CFSEU-BC. Supt. Chapman concluded that his goal in the imposition of discipline must be to correct and educate the Member. He concluded that the seriousness of the misconduct warranted a one-day suspension without pay.

- (12) On June 30, 2022 the Commissioner concluded, pursuant to section 138(1) of the *Police Act* that there was a reasonable basis to believe that the Disciplinary Authority's findings under section 125(1) were incorrect, that the Disciplinary Authority had incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1) and that a Review on the Record was necessary in the public interest. The Commissioner noted that a Public Hearing was not necessary since the Member called no evidence at the Discipline Proceeding and accepted the facts and findings contained in the Discipline Authority's decision pursuant to section 112 of the *Police Act*. The Commissioner therefore directed a Review on the Record pursuant to section 141 of the *Police Act*.
- (13) In reaching the decision that he did the Commissioner considered the following:
 - (a) The actions of the Member were serious. The conduct occurred in the context of a significant investigation under the conduct of another police agency through inappropriate communication, containing representations and references of material facts, with a relative of a deceased person in direct contradiction to the express direction of his superiors.
 - (b) The Member is an experienced police officer who clearly understood the potential detrimental consequences of contacting material witnesses in matters in which he had no role as a peace officer.
 - (c) The disciplinary or corrective measure proposed is inappropriate or inadequate as it does not sufficiently address the seriousness and the circumstances of the misconduct.
 - (d) The low level of disciplinary and corrective measures proposed by the Discipline Authority are not proportionate to the seriousness of the misconduct in all the circumstances, including the planned and premeditated decision to ignore the directions of his supervisors in the context of his experience and the serious circumstances of the matter.
- (14) I was appointed as Adjudicator for the Review pursuant to section 142(2) of the *Police Act*.
- (15) The OPCC appointed Trevor Martin as their counsel. The Member is apparently suffering from long-term Covid-19 and was not immediately able to address the Commissioner's decision ordering a Review. Initially, Det. Marshall acted as representative for the Member. Ultimately a conference call was conducted on September 6, 2022. Mr. Martin agreed to provide written submissions by October 17, 2022 and Supt. Chapman was given until October 31, 2022 to provide submissions if he chose to. The Member was also to provide any submissions by October 31, 2022. Written submissions were received from Mr. Martin October 17, 2022, Supt. Chapman opted not to make any submissions and Det. Marshall withdrew as the Member's formal representative and advised that the Member indicated he would not be making any submissions.

(16) Throughout this entire process the Member has never retained counsel.

II. The Record

(17) The record of the disciplinary decision ultimately included the following:

- (a) the FIR and associated attachments;
 - (b) the written reasons of Supt. Chapman, the exhibits in the Discipline Proceeding and the audio files of the Discipline Proceeding;
 - (c) the CFSEU-BC service record of the Member;
 - (d) the relevant episode of the W5 program airing on January 23, 2021; and
 - (e) Insp. Ritchie's Notice of Discipline Authority's Decision
- (collectively, the "Record")

(18) The documents I initially received for this Review included the FIR and attachments, the Member's municipal service record and the written reasons of Supt. Chapman and documents related to the Discipline Proceeding. My review of Supt. Chapman's reasons revealed that he had quoted at some length the reasons of Insp. Ritchie who had conducted the section 112 Discipline Review.

(19) On November 2, 2022 and in light of the Member refraining from making submissions in this Review, I sought consent of the parties to receive evidence that was not part of either the Record or the service record of the Member pursuant to section 141(4) of the *Police Act*. Specifically, I requested to review the W5 news program that is relevant to this Review and the Member's prior service record with the RCMP.

(20) The Commissioner and the Member consented to my review of the W5 program.

(21) In relation to the Member's RCMP service record, the Member's position was that he was not inclined to have the RCMP provide information on his behalf and instead proposed entering his own documentation on his service record. The Commissioner responded to this suggestion advising they were not agreeable as this would not contain all relevant information.

(22) On November 17, 2022 the Member sent a self-created document pertaining to his RCMP service record to me through counsel. I have not reviewed this document and it has not been considered as part of this Review. Later on November 17, 2022 the Commissioner provided submissions in response to the Member's RCMP document. I have not reviewed these submissions and they have not been considered as part of this Review as I did not consider the document.

- (23) My decision not to include the submissions as to the Member's RCMP service record was based on the fact that the Member chose not to make any submissions in the Review, there was no agreement between the parties as to the provision of this document or whether it would be provided by the RCMP directly or by the Member and concerns arose as to the reliability of a self-created document. I have determined that because the RCMP service record was not part of the record initially before me in this Review and based on the other evidence available, the RCMP service record is ultimately not required to make a decision.
- (24) On November 18, 2022, I requested Insp. Ritchie's section 112 Notice of Discipline Authority's Decision and was provided this on November 21, 2022.
- (25) Although Insp. Ritchie's Report Confirming the Disciplinary or Corrective Measures agreed upon in a Prehearing Conference pursuant to section 120(12) of the *Police Act* was referred to in paragraph 33 of Supt. Chapman's Disciplinary Authority reasons I was not provided with that report as part of the Record.

III. Standard of Review

- (26) Section 141(9) of the *Police Act* confirms that the standard to be applied in my review of the discipline decision is correctness. Specifically, my obligation is to determine the appropriate disciplinary or corrective measures to be taken in relation to the Member in accordance with section 126 of the *Police Act* which provides as follows:

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.

(27) In completing my Review on the Record, I am required to consider all aggravating and mitigating circumstances to determine the just and appropriate disciplinary or corrective measures in relation to the misconduct of the Member.

(28) If I determine that one or more disciplinary or corrective measures are necessary, section 126(3) of the *Police Act* provides that 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.

- (29) Further guidance is found in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 54:

[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.

- (30) Accordingly, in a Review on the Record, the Adjudicator does not need to show deference to the Discipline Authority's reasoning process. While the Discipline Authority's reasoning should be taken into account, and may be adopted, the Adjudicator is empowered to independently analyze and reach conclusions on the matters under review. The Adjudicator's reasoning and conclusions will be substituted for those of the Discipline Authority where they differ.

IV. Evidence and Misconduct

- (31) Despite the Member admitting to the misconduct of Discreditable Conduct, it is necessary to review the evidence and facts in detail. In this Review there have been relevant discrepancies noted and errors made in the prior proceedings as will be highlighted below. Even in the face of the Member's admission, those errors directly relate to the severity of the conduct and as such, impact the determination of reasonable disciplinary and corrective measures.

Member's Statements, Interview and Evidence in the Record

Relevant Background to Misconduct

- (32) The Member was an RCMP officer for approximately 31.5 years. He attained the rank of Superintendent with the RCMP during his tenure.
- (33) In 2008 the Member had been transferred to Kelowna where he lived and worked until 2017 when he was transferred to Vancouver as a senior RCMP officer attached to CFSEU-BC. The Member subsequently retired from the RCMP and on October 22, 2018 he was sworn in as a Sergeant at the OCABC.
- (34) For clarity, the Member is specifically a Sergeant with the OCABC. The CFSEU-BC is an integrated police program, made up of members from every police force in the province, including the RCMP. All members of OCABC are attached to the CFSEU-BC.
- (35) During his time in Kelowna with the RCMP, the Member was promoted to Inspector in charge of Federal Policing. His wife was a public health nurse who became a work colleague and friend of another public health nurse, Arlene Westervelt. The Gateley's and Westervelt's would socialize several times per year.

- (36) In June 2016 the Member was advised by his wife that there had been an incident at Okanagan Lake and that Ms. Westervelt was missing. It was subsequently established that she had died. The RCMP investigated the incident and initially concluded that it was a tragic accident.
- (37) Shortly after learning of Ms. Westervelt's death, the Member and his wife attended on the Westervelt home to provide comfort and support to Ms. Westervelt's husband, Bert Westervelt, and her family. During one of these visits Mr. Westervelt mentioned that his wife's phone had been returned to him by the RCMP and that there were photos on it taken the day of her death that he wanted for the funeral. Mr. Westervelt indicated that he did not know the passcode to open the phone and that Telus had not been able to assist. Mr. Westervelt also asked if Ms. Gateley would do a reading at the funeral. During these conversations a number of other family members were present. The Gateley's were unavailable, and Ms. Gateley indicated she could not do a reading. The Member said that he did not know whether he could assist in accessing the mobile phone but would see what he could do.
- (38) The Member had access to an RCMP Cellebrite machine that could facilitate access to Ms. Westervelt's phone. The Member spoke to the operator of the machine who indicated he was uneasy with using this machine as there was no search warrant. The operator subsequently consulted with his supervisor who advised the Member to speak to the Lead Investigator in Ms. Westervelt's death. The Member did speak with the Lead Investigator who indicated there was no problem with accessing the phone as the RCMP had concluded that the death was an accident. Apparently, the photos requested were provided to Mr. Westervelt for the funeral.
- (39) Sometime later, Ms. Gateley received a text from Mr. Westervelt asking if Sgt. Gateley would come over and talk to him. The Member agreed and during an initial brief discussion Mr. Westervelt indicated that he had not been truthful with the RCMP about the facts surrounding his wife's death. The Member realized immediately the seriousness of the situation and obtained a "pure version statement" from Mr. Westervelt. After making extensive notes he contacted the Kelowna RCMP Major Crimes Section and provided them with the statement he had taken from Mr. Westervelt along with the circumstances surrounding the use of the Cellebrite machine to access Ms. Westervelt's phone.
- (40) Shortly thereafter, the RCMP began a criminal investigation and subsequently laid second-degree murder charges against Bert Westervelt. The Member was careful to stay away from the investigation but was notified that he would be a witness at a preliminary inquiry that was set to be conducted in September 2020. A month before the court date he was advised that the Crown had entered a stay of proceedings (the "Stay of Proceedings"). The Member was told that there was an issue with the pathologist's report.

- (41) In October 2020 the Member was contacted by a producer of W5, an investigative, current affairs and documentary program which airs on CTV, who wanted to speak to him with respect to the Westervelt homicide investigation. At this time, the Member was now retired from the RCMP and working with CFSEU-BC through the OCABC. The Member had made his colleagues at CFSEU-BC aware of his involvement with the Westervelt homicide investigation. The Member was aware that Ms. Westervelt's family had not been told the circumstances surrounding the Stay of Proceedings and that they were concerned that there was an RCMP cover-up. In particular, the Member was aware that there was a suggestion that he had been a close friend of Mr. Westervelt and was involved in engineering a cover-up. The Member understood that Ms. Westervelt's family was concerned that the Member's actions had resulted in the Stay of Proceedings.
- (42) The RCMP had begun a Code of Conduct investigation concerning the Member's actions in assisting Mr. Westervelt in accessing Ms. Westervelt's cell phone. The Code of Conduct investigation terminated when the Member retired from the RCMP.
- (43) The Member became aware through the Code of Conduct investigation that he had already been the subject of an ACU investigation (the Review of the Record disclosure materials does not provide any information about what specifically an ACU investigation involves). However, from the Member's perspective the investigation had been driven by Ms. Westervelt's family who had concerns that the Member was involved in criminal wrongdoing and the obstruction of justice.

The Misconduct

- (44) The Member immediately notified, as he was then, Chief Superintendent Manny Mann who was in charge of Major Crime at the time and advised C/Supt. Mann of the request from W5.
- (45) The Member was concerned about the request from W5 and potential consequences to his reputation and that of the RCMP. He wanted to reach out to the family to explain his involvement with the investigation and in particular to explain that his actions in facilitating access to Ms. Westervelt's phone did not result in the Stay of Proceedings.
- (46) On October 20, 2020, the Member sent an email to C/Supt. Mann who was the Officer-In-Charge of the RCMP's E Division Major Crime. In that email the Member made the following points:
- a. He explained his concerns as to why the media would be contacting him and noted that he was not a part of the investigation into Ms. Westervelt's death. He wanted to know whether the RCMP had been contacted by W5;
 - b. He explained that there had been a Code of Conduct investigation in 2018 and the matter was under appeal with the RCMP;

- c. He stated that he was a witness in the Westervelt homicide investigation and had been notified by Crown Counsel prior to the preliminary inquiry that there was going to be a Stay of Proceeding as a result of information received from the pathologist;
 - d. He had been told that the Crown would not be advising the family as to the reason for the Stay of Proceeding and that the RCMP could not tell the family the reason;
 - e. He explained that he was concerned that Ms. Westervelt's family would think the Stay of Proceeding was a result of his actions surrounding the unlocking of Ms. Westervelt's cell phone and the media would spin it out of control; and
 - f. He stated that he felt the family of Ms. Westervelt should be provided details surrounding the Code of Conduct investigation. The Member explained that he had done nothing wrong and had no issues with waiving his privacy rights.
- (47) The Member then spoke to his immediate superior, Inspector Mooker to advise him of the situation and subsequently emailed Insp. Mooker indicating that he had also spoken to Superintendent Wijyakoon. Supt. Wijyakoon's job was to oversee three large investigative teams around the province, one of which was in Kelowna. The Kelowna team was in charge of the Westervelt homicide investigation.
- (48) On October 21, 2020, the Member sent another email to C/Supt. Mann to tell him that he had spoken to the producer of the W5 program that morning and that they wanted to interview him. He suggested that they needed to meet because from his perspective a "no comment" approach would "not do the trick". He was concerned that the media would only hear the story from the perspective of Ms. Westervelt's family.
- (49) On October 21, 2020 the Member met with C/Supt. Mann and Supt. Wijyakoon. The Member reiterated his concerns about why the media would be contacting him since he was not part of the investigation. The Member insisted that the family should be provided with the circumstances surrounding the Code of Conduct investigation and that he would waive his privacy right so that the family could get the necessary information. The Member was told that the media had been advised through a press release that the Stay of Proceeding was not the result of any conduct involving a member of the RCMP. The Member was insistent that the RCMP position needed to be provided and he asked whether or C/Supt. Mann and Supt. Wijyakoon would agree to participate in the W5 interview. Neither were receptive to the idea and expressed the opinion that the media should be directed to go through RCMP communications. Supt. Wijyakoon advised the Member that the RCMP Southeast District family liaison team had a good relationship with the

Westervelt family and that there did not seem to be a concern with respect to their understanding as to the Stay of Proceedings and the Member's involvement.

- (50) On October 22, 2020 the Member sent another email to C/Supt. Mann confirming he had spoken to the producer of W5 and provided the producer with contact information for media relations at the RCMP. In this email the Member suggested that through the Southeast District family liaison team a meeting could be arranged between the Member and the family with the intent of placing the families' minds at ease by answering all of their questions.
- (51) On November 25, 2020 the Member received an email from W5 requesting a sit - down interview with him to discuss his personal friendship with Mr. Westervelt, his involvement in unlocking Ms. Westervelt's personal cell phone and the RCMP Code of Conduct mandate letter. The Member immediately emailed Insp. Mooker attaching the email request. The Member once again expressed his concern that the family of Ms. Westervelt had not been apprised as to the reason for the Stay of Proceedings. In that same email he noted that the media release he received did not answer the Westervelt's questions and lamented the fact that the Westervelt family had to hire a lawyer. The Member noted that there was an allegation floating around that Crown prosecutors told the family that the case no longer met the substantial likelihood of conviction threshold. The Member believed that the Westervelt family were not provided with an explanation as to why that had occurred. He explained that he felt strongly that the Westervelt family should be advised of everything W5 was asking of him in the interview. He pointed out that the only thing he did not know is what evidence came from either Ms. Westervelt's cell phone or from the Member's conversation with Mr. Westervelt that had occurred before Mr. Westervelt was being investigated for murder. The Member pointed out that he had no understanding of the impact those two factors have on the overall case. He stated that if the impact was negligible, he would suggest the Westervelt family have their questions answered but if the evidence gleaned from either event was of importance to a future prosecution, then answering the questions should be avoided. The Member reiterated that the entire situation had nothing to do with his current position as a member of the OCABC.
- (52) That same day, November 25, 2020, the Member received an email reply from Insp. Mooker who asked that the Member not contact W5 until he checked out the situation. Insp. Mooker went on to say "I would suggest that you have your best suit on at all times when at home just in case that they show up there!" The Member took this comment as an attempt by Insp. Mooker to lighten the mood.
- (53) On November 27, 2020 a meeting was arranged for December 1, 2020 with Supt. Wijayakoon, Insp. Mooker and Superintendent Duncan Pound. At the December 1, 2020 meeting, the following occurred:
 - a. The Member provided Supt. Pound with the background regarding the Code of Conduct allegation and the appeal;

- b. The Member again expressed his concern that the media will spin the story out of control because the media only has one side and he raised concerns about the RCMP position and the one sentence rebuttal that was contained in the media release;
 - c. They discussed the need for the Westervelt family to know the situation as a news article revealed that the family had concerns and questions with respect to the Stay of Proceedings;
 - d. Supt. Wijyakoon once again explained that the Southeast District team and their family liaison had a good relationship with the Westervelt family and that the family knows the Stay of Proceeding was not result of anything the Member did; and
 - e. Further discussion ensued surrounding strategies in dealing with the media and in particular what the Member should do and say if the media attended his home. Supt. Pound referred the Member to Staff Sergeant Houghton from RCMP media relations.
- (54) S/Sgt. Houghton subsequently provided written guidance as to what the Member should say or do if media attended his home.
- (55) W5 attended the Member's home on December 13, 2020. The Member followed S/Sgt. Houghton's suggested responses. The Member was concerned that his private residence had been photographed and sought advice as to what he should do. He emailed Supt. Wijyakoon inquiring as to whether or not the Southeast District family liaison person had been in contact with the Westervelt family and whether the family knew that the Member had had no involvement with the Stay of Proceeding.
- (56) On January 23, 2021, the W5 program aired on CTV. The reaction from the Member's family was one of concern, including his elderly father. The Member's wife received calls from her co-workers, who were nurses who had worked with Ms. Westervelt, voicing their concerns.
- (57) On January 26, 2021, the Member met with Supt. Wijyakoon and explained the effect the program was having on his family. He explained that this was exactly what he wanted to avoid and suggested that it all could have been avoided if the Westervelt family had been made aware of the details of the Member's involvement and the reason for the Stay of Proceeding. He noted that the media was running with the idea that the Member had retired from the RCMP to avoid discipline. He explained that, in his opinion, the family needed to know the facts and that he was not concerned about his privacy rights. The Member wanted to write a letter to Ms. Westervelt's sister who seemed to be the spokesperson for the family. He suggested that the letter could either be sent through the family liaison worker from the RCMP Southeast District or that he could send it through a lawyer. Supt. Wijyakoon was sympathetic to what the Member was going

through and suggested he needed to talk to the RCMP Southeast District family liaison member.

- (58) As an aside, the FIR notes that Supt. Wijyakoon suggested he was not sympathetic, however that is not what was stated in the notes that the Member provided to Sgt. Daniel in her investigation.
- (59) On February 20, 2021, the Member mailed a letter to Ms. Westervelt's sister via her lawyer in Edmonton, Alberta.
- (60) On April 21, 2021, the Member received an email from another producer with Global TV who wanted to conduct an in-person interview about the circumstances surrounding his relationship with Mr. Westervelt, the Stay of Proceedings and the Member's involvement with the investigation.
- (61) On May 7, 2021, the Member received an email from S/Sgt. Houghton to the effect that the family was suing Mr. Westervelt in civil proceedings. S/Sgt. Houghton pointed out that because the criminal investigation remained open and because there was now a civil case where the Member may be called as a witness the RCMP would be making no further comment. The Member responded that he had been contacted, had not replied and he was not going to pursue the matter any further.
- (62) On May 22, 2021, Global TV aired their own report on the Westervelt matter and included the letter that the Member had sent to Ms. Hennig. From the Member's perspective the program sensationalized the incident and spread misinformation across the country. The Member believed the public were recharged and his reputation was further damaged.
- (63) Two days later the Member was advised that there was going to be a request for an investigation with the OPCC as a result of the letter he had sent on February 20, 2021.

The Misconduct Investigation

- (64) On June 29, 2021, the Member was interviewed by Sgt. Daniel in her role as the investigator preparing the FIR. The Member was clear in stating that he was never directly told to not contact the family or the witnesses. The Member explained that in meeting with Insp. Mooker, Supt. Wijyakoon, and Supt. Pound he was meeting with peers and there were no direct orders ever given. He did confirm that at one point Insp. Mooker asked "hey, do me a favour and do not talk to the media" but there were no orders; it was not that kind of relationship.
- (65) The Member indicated that he "totally got not talking to the media and there were no issues with that or any direction they provided surrounding not talking to the media". During the various meetings there were no notes made. The Member understood these to be "conversations we have with colleagues".

- (66) On November 17, 2021, Sgt. Daniel conducted a follow-up recorded interview with the Member. During the interview she explained that she had interviewed Insp. Mooker, Supt. Pound and Supt. Wijyakoon and they maintained that they had told the Member not to have contact with Ms. Westervelt's family. The Member reiterated that at no time was he told about the Ms. Westervelt's family and at no time was he told that they were witnesses. The conversations, even with Supt. Pound, were primarily on the media and not talking to the media. The Member did not believe that either Insp. Mooker or Supt. Pound knew that Ms. Westervelt's family were witnesses and asserted that it was even possible that Supt. Wijyakoon did not know they were witnesses. The Member reiterated that they had all been colleagues previously with similar roles, and as the situation with the Westervelt's started to come together, they were there to provide advice, and support, acting as you would with colleagues and friends. The Member said that if Insp. Mooker had given him a direct order he would have phrased it as an order.
- (67) Sgt. Daniel informed the Member that she had checked with the relevant authorities with regard to Ms. Hennig being on file as a witness and had been told that she was. She asked the Member for his response. The Member explained that as part of the RCMP Code of Conduct investigation he was provided with disclosure. He read the allegation of corruption and understood that there had been an ongoing investigation into his conduct. Nothing in the material indicated Ms. Hennig was a witness. The Member asserted that if he had known that Ms. Hennig was a witness, he would have never sent the letter. He explained further that he knew nothing about the investigation and had never gotten involved with it.

Insp. Mooker Interview

- (68) Insp. Mooker was interviewed July 13, 2021. A technical problem prevented the interview from being recorded.
- (69) Insp. Mooker became aware of the situation outlined above on October 21, 2020 when the Member advised him that he had received a request from W5 to provide a statement on Ms. Westervelt's homicide investigation. The Member explained the background.
- (70) Insp. Mooker met with his superiors to advise them of W5's request for an interview. After consultation it was determined that any request from W5 would need to be forwarded to the RCMP communications section. The Member told Insp. Mooker that he wanted to reach out to the family and Insp. Mooker told him that all media requests should go through the RCMP Southeast District communications section.
- (71) In December 2020 Insp. Mooker and Supt. Pound met again with the Member who reiterated his desire to reach out to the family of Ms. Westervelt. The Member was again advised to not engage the family at all. When asked whether an order was given verbally or by email Insp. Mooker replied that he only advised the

Member verbally. When asked whether the Member understood that the admonition not to contact the family was an order Insp. Mooker replied "I do not know, you will have to ask him how he understood it".

- (72) Sgt. Daniel followed up with Insp. Mooker in November 2021. Insp. Mooker confirmed that he did not remember the actual words he used when speaking to the Member but that he is certain he provided clear direction not to contact the victim's family without first advising him so he could liaise with the Major Crime Unit. He did not recall the Member's response but believed that the Member clearly understood his direction.

Supt. Wijyakoon Interview

- (73) Supt. Wijyakoon was interviewed on August 11, 2021. Supt. Wijyakoon explained that his role was overseeing the three large investigative teams around the province, one of which was in Kelowna and was investigating the death of Ms. Westervelt. The Kelowna team secured charges in Ms. Westervelt's death and those charges were subsequently stayed for reasons unrelated to the Member's involvement. However, there was a lot of media attention with respect to the Stay of Proceedings and the family were pointing the finger at the Member.
- (74) Supt. Wijyakoon confirmed that he met with the Member who was upset at the media attention. Supt. Wijyakoon told the Member that the investigation into Ms. Westervelt's death was ongoing and that the Member should not have any contact with Ms. Westervelt's family members. Supt. Wijyakoon did not "expressly tell him [the Member]" or forbid the Member to contact Ms. Westervelt's family members, Supt. Wijyakoon just told him he should not contact them.
- (75) Supt. Wijyakoon became aware a few months later that the Member had sent a letter to Ms. Hennig explaining his actions in the investigation. The letter was not detrimental to the investigation, but Supt. Wijyakoon believed the Member should not have contacted a witness on that case but understood why he did it. Supt. Wijyakoon stated that the advice he provided to the Member was not a direct order from a person in a position of authority. In answer to a direct question posed by Sgt. Daniel, Supt. Wijyakoon said it was not a "direct order".

Supt. Pound Interview

- (76) Supt. Pound was interviewed on September 8, 2021. He became involved in this matter in November 2020. The Member was very stressed about the W5 program that was to air in January regarding Ms. Westervelt's death. In particular, the Member was concerned that the W5 program would imply that his Code of Conduct investigation was the reason for the Stay of Proceedings. The Member wanted to ensure that there was a robust answer from the RCMP. Supt. Pound commented that Sgt. Gateley had a "heartfelt desire to provide clarity to the family on why the charges had been stayed."

- (77) Supt. Pound and Insp. Mooker met with the Member and discussed how to respond to the media. Supt. Pound stated that as the officer directly supervising the Member, Insp. Mooker was going to be the one to provide the clear and definitive language to not communicate with Ms. Westervelt's family. The expectation was that the Member would go through Insp. Mooker for any consultation with the media or family. Supt. Pound believed that Insp. Mooker ultimately did provide that direction to the Member. Supt. Pound felt that the Member was given a direct order not to communicate with the family and that the Member understood it was a direct order. Supt. Pound did not have anything in writing showing that an order was given.
- (78) Supt. Pound believed the Member knew he was a potential witness in the case. They discussed the importance of not doing anything to taint the evidence of other witnesses. Supt. Pound knew that the situation would be difficult to deal with as a long-serving police officer having the public believe you are responsible for derailing a murder investigation. Notwithstanding that, Supt. Pound's expectation was that the Member would wait to get the matter before the courts. Supt. Pound believed that after the W5 episode aired in January the "ship had sailed" and there was no way to repair the public damage so he was surprised that the Member would write a detailed letter to the family after that time, particularly when he was under direction not to have contact with the family.
- (79) When Supt. Pound became aware that the Member had written a letter, he and his superiors decided to engage the OPCC.

The Letter

- (80) On February 17, 2021, the Member wrote to Ms. Hennig, the spokesperson for Arlene Westervelt's family. In the letter the Member said that he had watched a television program and he understood that there were questions surrounding his interaction with Bert Westervelt after Ms. Westervelt's death. He stated that the conclusions the program came to were regrettable and inaccurate and he wanted to assure the family that his actions did not in any way compromise the police investigation into Ms. Westervelt's death. In the letter the Member:
- (a) Attempted to put the relationship between the Gateley's and Westervelt's into perspective and emphasized that he never had any social interaction on his own with either Arlene or Bert Westervelt and did not possess their phone numbers or email addresses;
 - (b) Set out how he became aware of Ms. Westervelt's death and the actions the Member and his wife took to support Mr. Westervelt and the rest of the family as they grieved the death. He confirmed that the RCMP had initially concluded that her death was a tragic accident;
 - (c) Explained the circumstances around Mr. Westervelt's request that he obtain photographs of the couple's last day together for the funeral. The Member

explained how he came to have Ms. Westervelt's phone unlocked. He confirmed that he had consulted the officer investigating Ms. Westervelt's death, and that officer's supervisor, prior to his actions;

- (d) Confirmed that Mr. Westervelt was charged with his wife's murder and that he received a subpoena to attend court in September 2022 to provide evidence at the preliminary inquiry. He explained that he was shocked when the charge was stayed and was told that it was stayed because there was new evidence regarding the pathologist's report; and
- (e) Stated that he now believed that the Coroner's report into Ms. Westervelt's death had been released and hoped that the report was clear enough to answer any questions as to the Stay of Proceedings. He noted that the Stay of Proceedings was entirely unrelated to the cell phone. He observed that the data that was contained on the cell phone was preserved by the RCMP and was available to be used as evidence in the trial.

- (81) Significantly, the Member did not mention in the letter that he had been contacted by Mr. Westervelt who confessed to the Member that he had not told the RCMP the truth. He did not reveal that he had interviewed Mr. Westervelt, taken detailed notes of the interview and turned them over to the RCMP in Kelowna.

V. Imposition of Disciplinary or Corrective Measures

The Disciplinary Decision

- (82) Supt. Chapman was tasked with determining an appropriate penalty as a result of the Member's decision to admit to the allegation of Discreditable Conduct. At paragraphs 46 and 47 of the Form 4 Supt. Chapman adopted the Review and Legal Analysis prepared by Insp. Ritchie when he conducted his section 112 Notice of Discipline Authority's Decision:

46. In his Review and Legal Analysis found on pages 6-7 of the section 112 Notice of Discipline Authority's Decision, Inspector Ritchie concluded that:

[19] After placing the entirety of events into context, and after applying the required objective test based on the case...I am satisfied that Sergeant Gateley knowingly mailed the letter to Ms. Hennig, directly contravening the directions of his supervisors, as he was desperate to have his version of events reach the family. A police officer intentionally mailing a, letter explaining his own involvement in a homicide investigation to the victim's family in a homicide (who are also witnesses), attempting to explain his actions, directly contravening the orders of superior officers, would lead a reasonable and dispassionate member of the community, having knowledge of all the facts, to conclude that his actions would bring, or likely bring, discredit to CFSEU-BC or the OCABC.

47. I concur with Inspector Ritchie's analysis and conclude that Sergeant Gateley's conduct in this matter was culpable and that he alone is responsible for his actions. However, I feel that the disciplinary or corrective measure of a Written Reprimand falls short in maintaining the public's confidence in the police disciplinary process and the high standard of conduct expected of members of the OCABC or CFSEU-BC.

- (83) In the result Supt. Chapman concluded that the seriousness of the misconduct committed by the Member warranted a one-day suspension without pay rather than a Written Reprimand. In reaching that decision Supt. Chapman concluded that the public's confidence in the police disciplinary process was so important that a Written Reprimand fell outside the range of reason and fell short of what was appropriate given the severity of the misconduct. He decided that the step up in corrective measure was not "tinkering" with the penalty.
- (84) Supt. Chapman carefully reviewed the aggravating and mitigating circumstances set out in section 126(2) of the *Police Act*. He concluded:
- (a) With respect to 126(2)(a) – The Member's misconduct was serious and went beyond an error in judgement; that the Member "knowingly composed, signed and mailed a letter...in contravention to direction provided to him."
 - (b) With respect to 126(2)(b) – The Member's service record contained no substantiated misconducts during his tenure as a sworn member of the OCABC and CFSEU-BC;
 - (c) With respect to 126(2)(c) - That a one-day suspension without pay would have little or no impact on the Member or his family;
 - (d) With respect to 126(2)(d) - There was no reason to believe that the Member would commit future misconduct and that he believed that the Member had learned from his mistake;
 - (e) With respect to section 126(2)(e) - That the Member fully cooperated during the *Police Act* investigation but throughout maintained that he had done nothing wrong. The Member minimized his role in not following the direction provided to him by senior officers and instead steered his response to his consideration for the welfare of Ms. Westervelt's family. The Member did accept responsibility for his actions when he participated in a prehearing conference and accepted the discipline imposed;
 - (f) With respect to 126(2)(f) - There is no evidence to suggest that OCABC's or CFSEU-BC's policies, standing orders or internal procedures or the actions of the Member's superiors had any bearing on the misconduct;

- (g) With respect to 126(2)(g) - Numerous authorities were reviewed in trying to establish the range of discipline or corrective measures taken in similar circumstances. In essence, the situation is so unique that none of the authorities cited were particularly helpful; and
- (h) With respect to 126(2)(h):
- Aggravating Factors:
 - As a result of his prior relationship with the Westervelt family, the Member was aware that he may be a witness in the investigation;
 - On multiple occasions the Member was provided direction from his supervisor and senior officers not to have contact with any witnesses from the Westervelt investigation;
 - The Member maintained he had done nothing wrong throughout much of the proceedings;
 - The Member deflected responsibility for his actions and when asked to explain them chose to refocus his answers as to the welfare of Ms. Westervelt's family; and
 - As the circumstances of the case are incredibly unique, the comparative cases brought forward to assess a range of discipline or corrective measures were somewhat ill fitting as a majority of those cases examined a Neglect of Duty misconduct;
 - Mitigating Factors:
 - The Member admitted to the misconduct of Discreditable Conduct; and
 - The Member agreed to the discipline of a Written Reprimand

Commission Counsel's Submissions

- (85) In written submissions the Commissioner argued that the Member's misconduct was serious and involved flagrant insubordination that threatened the integrity of evidence in a serious investigation involving a potential homicide. Further, the Member's misconduct demonstrated an unacceptable preference for an individual member's own perceived self interest over the interests of justice and law enforcement. The Member is an experienced senior member from whom much more is rightly expected. The Commissioner submitted that a one-day suspension without pay is inadequate and that the Member should be suspended without pay for a lengthy period of time or have his rank reduced.

- (86) Mr. Martin, for the Commissioner, noted that section 126(3) of the *Police Act* provides that a disciplinary approach that seeks to correct and educate the member takes precedence over more significant measures unless the suggested discipline is unworkable or would bring the administration of police discipline into disrepute. It was submitted that section 126(3) does not mandate that the least onerous measure be imposed. Instead, it mandates that priority should be given to “measures that rehabilitate (correct and educate) unless doing so would be impractical or cause the administration of police discipline to be held in low public esteem.”
- (87) Mr. Martin cited *The Matter of Cst. Steen*, RR19-02, dated 21 November 2019, for the proposition that the issue of whether proposed measures would “bring the administration of police discipline into disrepute” under section 126(3) of the *Police Act* should be considered from the perspective of a “reasonable person who is dispassionate and fully apprised of the circumstances of the case”; the question is “whether such a person would hold the system of police discipline in lower regard” upon learning of the proposed measures.” He cited: *The Matter of Cst. Ludemen and Cst. Logan*, PH 19-01, dated 11 June 2021, for the proposition that the “aims of the *Act* are to preserve the public interest in maintaining a high quality of policing standards and foster community respect for the administration of police discipline”.
- (88) The Commissioner submits that since the Member has admitted to misconduct in this matter the question is not whether he was ordered or directed not to contact Ms. Westervelt’s family or indeed whether he knew Ms. Hennig was a potential witness. Rather the only issue is the appropriate disciplinary or corrective measure to be taken.
- (89) The Commissioner maintains that the seriousness of the misconduct under section 126(2)(a) of the *Police Act* is the most significant factor in this case. The misconduct is egregious because:
- (a) The Member’s decision to send the letter was a choice to place his own perceived interests ahead of all others, including the interests of the police and the interests of justice more broadly;
 - (b) The Member knew that there was still an open investigation and that it was important not to compromise the integrity of that investigation by discussing the details of the case with witnesses and highlighted the Member’s November 25, 2020 email to Insp. Mooker as evidence of the Member’s awareness;
 - (c) The letter was sent despite multiple directions to the contrary. The Member’s misconduct was culpable in nature and went beyond a mere error in judgement. The letter was composed over weeks before it was signed and sent. The Member’s superior officers made it clear to the Member that the

reason he was told not to contact Ms. Westervelt's family was to preserve the integrity of the ongoing investigation;

- (d) The Member's motivation was a desire to clear his own name. The letter makes his motivation clear, it was an attempt to exonerate himself. In taking pains to minimize his relationship with Mr. Westervelt and maintaining that he did nothing wrong in relation to Ms. Westervelt's phone he revealed details about the case that could well have tainted Ms. Hennig's evidence at trial; and
 - (e) While the Member claimed to be motivated by a desire to put Ms. Westervelt's family at ease and address their concerns, the letter is clear that this motivation was at best secondary to his self-centred desire to defend himself and his reputation.
- (90) Mr. Martin noted that the Commissioner agrees with the Discipline Authority that the circumstances of this case are unusual and under section 126(2)(g) of the *Police Act* comparative cases are difficult to identify. The cases discussed by the Supt. Chapman in his decision under review do not seem to be of much assistance since none appear to involve the same level of seriousness.
- (91) The Commissioner submitted that although the Member's lack of any disciplinary history is somewhat mitigating, the fact that he was such a senior and experienced officer who displayed such poor judgement should be considered an aggravating factor.
- (92) The Commissioner is not raising any other aggravating or mitigating factors under section 126(2)(h).
- (93) The Commissioner submits that in light of the seriousness of the misconduct, a purely corrective and educative approach would bring the administration of police discipline into disrepute and the Discipline Authority was incorrect in concluding otherwise. The aggravating circumstances in this case and the need for measures to be proportional to the seriousness of the misconduct, require the imposition of measures at the punitive end of the spectrum. A reasonable person would consider a one-day suspension to be a proverbial "slap on the wrist" that would damage, rather than preserve, the public interest in maintaining a high quality of policing standards and fostering community respect for the administration of police discipline.

Member's Submissions

- (94) The Member chose to be unrepresented at the Review on the Record and did not file any submissions.
- (95) However, written submissions were filed on March 25, 2022 as Exhibit 5 in the Discipline Proceeding conducted by Supt. Chapman. The written submissions were prepared by Det. Marshall as the Member's representative.

- (96) In the written submissions, the Member admitted the alleged misconduct and argued that he, in good faith, agreed to a Written Reprimand in the Prehearing Conference.
- (97) In the submission the Member argued that if the disciplinary or corrective measure arrived at in the Prehearing Conference met the goal of correction and education the disciplinary measure should only be overturned if it was unworkable or if it would bring the administration of police discipline into disrepute. The first question should be whether greater punishment is needed to educate or correct the member. No further penalties are needed to serve the function of education or correction. Moreover, the Member submitted the disciplinary measure agreed to was consistent with other decisions.
- (98) The Member also argued that the decision of retired judge Ian H. Pitfield in OPCC file no. 2015-10904 ("OPCC file no. 2015-10904") is relevant and that agreements reached at a prehearing conference should be respected. Mr. Pitfield had this to say:

[24] The prehearing conference process is intended to promote the just, speedy and cost efficient conduct of the disciplinary process. The conferences are a vital part of the process. Their use should be encouraged. As a consequence, unless the result clearly falls outside the range of reason, whether below or beyond the appropriate range, I am of the view that acceptance of the prehearing conference result best serves the disciplinary process.

- (99) The Member also argued that the retired judge's comments in *The Matter of Cst. McCluskie*, RR 19-01, dated 17 May 2019 are applicable. In that decision retired judge Carol Baird Ellan had this to say:

[54] In relation to the first allegation...I would not see any room for an argument that I should 'tinker' with the penalty even if they would have reached a slightly different conclusion as to where in the applicable range the penalty should have fallen. The question raised by the Commissioner on that allegation is essentially one of fitness. The issue of effect on the administration of police discipline is wrapped up in that question, to my mind; i.e. a penalty that is outside the range might arguably bring the administration of police discipline into disrepute, but one within the range arguably would not. It follows that I agree with Mr. Woodall, that the analysis in such a matter should be more in the nature of a sentence appeal than a rehearing; and with Mr. Hickford, that if the penalty is within the range, that is the end of the matter.

VI. Analysis

Discrepancies in the Record

- (100) As outlined above, section 141(9) of the *Police Act* confirms that the standard to be applied in my review of the Disciplinary Decision is correctness.
- (101) I have concluded that Supt. Chapman was incorrect in accepting the analysis of Insp. Ritchie who authored the section 112 Notice of Discipline Authority's Decision. Insp. Ritchie's analysis and conclusions were seriously flawed:
- (a) In his reasons and analysis Insp. Ritchie refers to "Agreed Upon Facts". I can find no evidence in the Record of any agreement with respect to facts. It may be that Insp. Ritchie was referring to the fact that he agreed with the investigator and author of the FIR, Sgt. Daniels, and her assertion of facts. A close review of the evidence before Insp. Ritchie discloses that the facts were in dispute at that time as it related to the orders or direction of the Member's superiors; and
 - (b) Insp. Ritchie found the allegation of Discreditable Conduct to be substantiated. That was not his role under section 112 of the *Police Act*. If he found that the written material that he reviewed "appeared" to substantiate the allegation, then his role and statutory obligation was to convene a Disciplinary Hearing (unless a prehearing conference was offered). At that hearing Sgt. Gateley would then have an opportunity to make submissions and be heard which is his right under the legislation before a determination was made whether the allegations were substantiated.
- (102) These errors are significant to the determination of the severity of the misconduct of Discreditable Conduct.
- (103) Insp. Ritchie's decision to substantiate the allegation based upon his "Agreed upon Facts" left the Member in a very difficult position. He was not represented by counsel and was next presented with the possibility of a Prehearing Conference with a suggested disciplinary or corrective measure. The Member accepted and Insp. Ritchie approved a Written Reprimand as the appropriate discipline for the misconduct of Discreditable Conduct. Once the Member accepted that discipline, which necessarily required culpability of the misconduct allegation, albeit in a without prejudice process, he was in an extremely difficult position when the Commissioner rejected the resolution and ordered a Disciplinary Hearing to proceed. Compounding the difficulty was the fact that Supt. Chapman, the Discipline Authority under section 134 of the *Police Act*, was aware that the Member had already conceded to the misconduct allegation in that without prejudice process through his acceptance of a disciplinary or corrective measure.
- (104) In accepting and adopting Insp. Ritchie's analysis, Supt. Chapman implicitly accepted the "Agreed Upon Facts" and that Insp. Ritchie had already substantiated the allegation. My review of the evidence in the Record has led me to conclude that Supt. Chapman was not correct in reaching the findings of fact that he did.

Imposition of Disciplinary or Corrective Measures

- (105) The Commissioner argues that the most significant issue in determining what disciplinary or corrective measures should be imposed is the seriousness of the misconduct under section 126(2)(a) of the *Police Act*.
- (106) The Commissioner agrees that the circumstances of this case are very unusual and that there are no identifiable cases under section 126(2)(g) that are applicable. I concur.
- (107) I am of the view that the Discipline Authority was correct in his assessment of the other relevant factors under section 126(2), with the exception of the seriousness of the misconduct under section 126(2)(a) and mitigating and aggravating factors under section 126(2)(h).

Section 126(2)(a) – Seriousness of Misconduct

- (108) I must analyze whether Supt. Chapman in his role as Discipline Authority erred in determining the seriousness of the misconduct of Discreditable Conduct.
- (109) In my view, the analysis must begin with the context within which the misconduct is alleged to have occurred; the relationship between the Member, Supt. Pound, Supt. Wijaykoon and Insp. Mooker. The Record does not provide detailed information as to the command structure at CFSEU-BC or the relationship between members of the RCMP and the other police forces within. What is clear, is that the Member originally transferred to CFSEU-BC as a superintendent in the RCMP and senior member of CFSEU-BC's command structure. As such, when he retired from the RCMP and took an appointment as a sergeant with OCABC within the CFSEU-BC he was interacting with officers who had previously been peers. The interaction between the Member, Supt. Pound, Supt. Wijayakoon and Insp. Mooker is unusual and somewhat unique within what would normally be seen as a military style command structure. The Member made the point in his recorded interviews that "we had all been colleagues in a previous life with similar roles and, as the situation with the Westervelt's started to come together, they were there to provide, advice and support, acting as you would with colleagues and friends".
- (110) When the Member was first contacted by W5 in October 2020 he had already been the subject of an RCMP Code of Conduct investigation. He was provided a disclosure package that set out concerns that Arlene Westervelt's family had. He knew that the family had not been provided with the reason for the Stay of Proceedings. He immediately and fully briefed his superiors when W5 producers contacted him. It is clear from his interview with Sgt. Daniel that he felt it was urgent for the RCMP to get ahead of the story both for his reputation and that of the RCMP. He knew a one-line press release would not do the trick.
- (111) The specific allegation of Discreditable Conduct under section 77(3)(h) of the *Police Act* alleges that the Member communicated with a witness in a homicide

investigation, contrary to the direct orders of superior officers and supervisors. The Member admitted that allegation before Supt. Chapman after previously denying there was an order. However, the Record contains no evidence suggesting that the Member was ever aware that Ms. Hennig was a witness. The FIR suggests that when Sgt. Daniel contacted the Westervelt investigator she was told that Ms. Hennig was a recorded witness but there is no suggestion, other than the Member's admission of the allegation that the Member was informed of this during the material times. In fact, the Member maintained throughout that he did not know she was a witness until such time as he just admitted to the misconduct generally. The Record suggests that the focus was on not contacting family members as opposed to witnesses.

- (112) The Record is very unclear in terms of what the "direct order of superior officers and supervisors" actually involved. Directions to not contact the family and directions to not contact witnesses seem to be used interchangeably. In his statement Supt. Pound suggests that he left it to Insp. Mooker to deal with the Member and that any direct orders would have come from Insp. Mooker. In their statements both Supt. Pound and Insp. Mooker state that the direction was that the Member should have no contact with the family of Ms. Westervelt. In particular, Insp. Mooker suggests that he told the Member not to contact the victim's family without first notifying him so that he could liaise with the RCMP. Insp. Mooker had nothing in writing and when asked whether the Member understood this direction as an order he replied that Sgt. Daniel would have to ask the Member. He added that he thought the Member understood that to be the case.
- (113) At the material times, the Member's position was that Ms. Westervelt's family should be contacted, and their questions answered. I can find nothing in the statements of Supt. Pound or Insp. Mooker to suggest that the particulars of the investigation and any disclosure as to who were or were not witnesses was ever a topic of discussion. It is hard to understand, from a review of the Record, how the allegation transitioned from a direction not to contact the family to a suggestion that the Member knowingly risked jeopardizing the investigation by contacting a witness. Nevertheless, that is the allegation before me and it is admitted. I do note that the Member never had the advice or assistance of counsel either before Insp. Ritchie or Supt. Chapman.
- (114) In analysing the seriousness of the misconduct Supt. Chapman concluded that "[o]n multiple occasions, Sgt. Gateley was provided direction from his supervisor and senior officers not to have contact with any witnesses from the Westervelt investigation."
- (115) I have carefully reviewed the Record and cannot find evidence to support this conclusion. Clearly, the Member was advised not to contact the family in the context of his repeated pleas to answer the family's questions and to let them know why there had been a Stay of Proceedings. A review of the statements provided does not indicate that any of the officers knew the particulars of the investigation and who were and were not witnesses. Certainly, Supt. Wijayakoon

had every opportunity to indicate that family members were witnesses and that was the reason they should not be contacted. Instead, my review of the statements reveals that the discussions centred more around how to handle the media inquiries and the advisability of having the media relations arm of the RCMP deal with the situation. Supt. Wijayakoon repeatedly suggested that the RCMP Southeast District liaison had a good rapport with the family, could meet with them and assist in answering their concerns. The Record does not reveal that this was ever done.

(116) Moreover, although the Member was clearly motivated by a desire to preserve his reputation, it is difficult on the evidence before me to conclude that his desire to preserve his reputation was his only motivation. In his statements he says he was as concerned about the impact the allegations would have on the RCMP. Indeed, it is hard to understand why the RCMP, given the public relations issues they have had, would not want to answer a suggestion that corruption in the senior ranks of the RCMP had allowed an alleged murderer to go free. The RCMP did, in a one-line press release, state that accessing Ms. Westervelt's cell phone had no impact on the investigation or the Stay of Proceedings. However, no efforts were made to work with the Crown or others to ease the minds of the family and forestall subsequent nationwide programming that suggested RCMP actions derailed the murder charge.

(117) Supt. Chapman wrote, in considering the seriousness of the misconduct, that the letter the Member wrote related to his role as a witness in the Westervelt homicide investigation and his prior relationship with the Westervelt's. The letter clearly did outline how the Member and his wife had come to know the Westervelt's and discussed his motivation in attempting to assist the family retrieve photographs for purposes of the funeral. It was at times self-serving. However, the Member was careful not to provide any information that was not already public knowledge. His involvement with accessing the cell phone had already been dealt with. His reference to the BC Coroner releasing their report was also public knowledge. The only other involvement he had with the investigation was the statement he took from Bert Westervelt after Mr. Westervelt had indicated he had not been truthful with the RCMP. The Member had documented his discussion and turned it over to the Major Crimes unit in Kelowna. The Member did not refer to his actions in that regard in the letter to Ms. Hennig. Clearly, he could have disclosed the statement he took, the actions that he subsequently took with the statement, and the fact that shortly after a criminal investigation was commenced. Those factors would have been consistent with the submission that the Member was motivated solely by self-interest – however he did not disclose this information to Ms. Hennig.

(118) Supt. Wijayakoon stated in his interview with Sgt. Daniel that the letter was not detrimental to the investigation.

(119) In my view the Discipline Authority did not correctly assess the seriousness of the misconduct. Although the Member has admitted the Discreditable Conduct, the evidence in the Record suggests that he did not deliberately contact a witness in

a homicide investigation in contravention of direct orders from his superiors. He clearly did contact a representative of the Westervelt family against the advice of his superiors who wanted any contact with the family to occur after consultation with Insp. Mooker.

- (120) Evaluating the seriousness of that conduct is difficult because the Member has admitted the allegation despite all of the evidence to the contrary. I am satisfied on the Record before me that the Member was careful not to do anything that would impact the ongoing investigation. His attempts at answering questions the family had surrounding the reason for the Stay of Proceedings against Bert Westervelt were, in my view, efforts not only to preserve his reputation but that of the RCMP.

Section 126(2)(h) Aggravating and Mitigating Factors

- (121) A mitigating factor was the Member's desire to preserve his reputation and that of the RCMP and to provide Ms. Westervelt's family with some closure as to why the Crown had stayed proceedings against Mr. Westervelt. The Member understood that at one point the family had been provided with information that suggested the RCMP had sufficient evidence to lay a murder charge. After the charges were stayed, they were allegedly told that the Crown had no reasonable prospect of conviction. They had no information as to why the situation had changed other than suggestions that there had been interference with the investigation by a high-ranking member of the RCMP who was a friend of Mr. Westervelt. The Member's letter was an effort to ease the family's minds and forestall more nationwide investigative broadcasts raising even more questions of misconduct. His actions in writing the letter cannot, in my view, be said to be conduct that he knew or ought to have known would be likely to bring discredit on the municipal police department he served. Supt. Chapman was incorrect in assessing the aggravating and mitigating factors.

VII. Penalty

- (122) The Member, after Insp. Ritchie initially found the allegation had been substantiated prior to the Prehearing Conference, accepted the suggested penalty of a Written Reprimand. I have, unfortunately, not heard from the Member as to why he admitted the allegation of Discreditable Conduct after having maintained all along that he had done nothing wrong. As I have indicated, the Record does not, in my view, contain evidence that would support the allegation. The Member also admitted the misconduct before Supt. Chapman, admitted the FIR and did not require the Investigator, Sgt. Daniel, to testify. Whether or not after having accepted the misconduct in order to obtain the agreed-upon penalty suggested at the Prehearing Conference Sgt. Gateley abandoned his defence is an open question.
- (123) A Written Reprimand is a serious penalty for a member who has had 34 years of service as a police officer, 31.5 of those with the RCMP and at least 10 of those

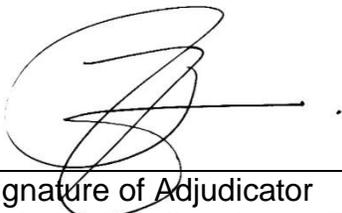
years as a commissioned officer with the RCMP. The circumstances of this case are unusual. The Member's reputation has no doubt been seriously damaged as a result of the allegations and innuendo surrounding the circumstances of Ms. Westervelt's death and the subsequent investigation. The Commissioner has argued that the seriousness of the misconduct in this case means a purely corrective and educative approach as mandated under section 126 of the *Police Act* is not appropriate. I disagree. In my view a reasonable person who is dispassionate and fully apprised of the circumstances would agree that a Written Reprimand is a more than appropriate penalty.

(124) In reaching this conclusion I have taken into consideration the very unusual circumstances. Ms. Westervelt's death occurred while the Member was a commissioned officer with the RCMP. This allegation under the *Police Act* concerns the Member's interactions with superiors at CFSEU-BC while he was a sergeant with the OCABC, interacting with senior officers who had at one point been his peers. As Supt. Pound mentioned, the matter became one which CFSEU-BC had to address when the media became involved, but their stated solution was to refer it back to the RCMP's media relations group. It was clear from viewing the W5 program that aired in January 2021 that the Member followed the directions he had received from S/Sgt. Houghton on how to deal with the media.

(125) I have also considered the comments of Mr. Pitfield in OPCC file no. 2015-10904 when he considered the Commissioner's decision to reject a penalty agreed to at a prehearing conference.

[24] The prehearing conference process is intended to promote the just, speedy and cost-efficient conduct of the disciplinary process. The conferences are a vital part of the process. Their use should be encouraged. As a consequence, unless the result clearly falls outside the range of reason, whether below or beyond the appropriate range, I am of the view that acceptance of the prehearing conference result best serves the disciplinary process.

(126) A Written Reprimand in these circumstances does not fall outside the range of reason. Under these unusual circumstances I am satisfied that acceptance of the Prehearing Conference result, the imposition of a Written Reprimand, best serves the disciplinary process.



Signature of Adjudicator
Judge John (Jim) James Threlfall (rt.)

Date: December 9, 2022