

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

**IN THE MATTER OF A REVIEW OF
ALLEGATIONS OF MISCONDUCT**

AGAINST

CONSTABLE [REDACTED]

OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF DECISION

(Section 117 of the Police Act)

TO: Constable [REDACTED]

**AND TO: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Department**

AND TO: Inspector [REDACTED]
**c/o Vancouver Police Department
Professional Standards Section**

AND TO: Sergeant [REDACTED] **Investigator**
**c/o Vancouver Police Department
Professional Standards Section**

**AND TO: Mr. Clayton Pecknold
Police Complaint Commissioner**

INTRODUCTION

1. In this decision I will refer to Constable [REDACTED] as “the Member” and [REDACTED] as “the Nurse”.
2. The Vancouver Police Department Mental Health Unit [MHU] is a partnership with Vancouver Coastal Health [VCH] that teams a Vancouver Police constable in plain clothes with a VCH Clinician or Psych nurse to support patrol with mental health related calls.
3. The Member was first assigned to the MHU in June 2021 and on [REDACTED] he was teamed with the Nurse in Car88. This was the first time they met. The allegations arise from the events of that evening.

COMPLAINT AND INVESTIGATION HISTORY

1. Constable [REDACTED] was a friend of the Nurse. On [REDACTED], in response to an inquiry by Constable [REDACTED] the Nurse described the events of the evening before.
2. On August 11, 2021 Constable [REDACTED] informed Acting Sergeant [REDACTED] Constable [REDACTED] and Constable [REDACTED] about the incident.
3. The Office of the Police Complaint Commissioner (OPCC) received the information from the Vancouver Police Department (VPD) on August 12, 2021.
4. On August 23, 2021 the Police Complaint Commissioner directed that the VPD conduct an investigation. Sergeant [REDACTED] of the VPD Professional Standards Section (PSS) was assigned to investigate.
5. During his investigation Sergeant [REDACTED] learned that the Member had queried the Nurse on the police databases at 906pm on [REDACTED]
6. In his report Sergeant [REDACTED] identified 3 issues of misconduct against the Member: discreditable conduct; improper use or care of firearms, and corrupt practice.
7. Sergeant [REDACTED] produced the Final Investigation Report dated June 8, 2022 [FIR] and submitted it to Inspector [REDACTED], the Discipline Authority.
8. On June 20, 2022 Inspector [REDACTED] in her capacity as the Discipline Authority found all the allegations of misconduct to be unsubstantiated.

9. The Police Complaint Commissioner Clayton Pecknold disagreed with the conclusions of the Discipline Authority.
10. By letter dated July 18, 2022 the Police Complaint Commissioner appointed me to review the Final Investigation Report [FIR], the evidence and records referenced in the FIR.

THE ALLEGED MISCONDUCT

Count 1 Discreditable Conduct

That the Member committed discreditable conduct contrary to section 77(3)(h) of the *Police Act*.

The Facts:

- a. The Member told the Nurse that she could not call the police “cops” as that was basically like the “n-word”;
- b. The Member said that if he caught a man abusing a child he would love to take a five-pound rubber mallet and break all the bones in his hands then beat him up;
- c. The Member made jokes about Jews and south Asians;
- d. The Member showed the Nurse a video of a female Asian driver made to drive with her eyes taped open. The Member was amused by the video;
- e. Vancouver is a city of diverse races, cultures and ethnicities. There are large populations of Chinese and south Asians;
- f. The Nurse said that she lost her phone once and worried about whether the person who found it would demand money. The Member said “if I were there ...” then unholstered his sidearm;
- g. The Member lamented the good “ole” days when [an officer] could pistol-whip people. At this point the Member unholstered his sidearm and held it across his chest;
- h. The Member denies unholstering his firearm;
- i. The Black Lives Matter became a major social protest movement following the police killing of a black man in 2020;
- j. Cultural expropriation has been a racial and cultural issue for many years; and
- k. The Nurse said she did not feel threatened or endangered. She disagreed that the events would bring the VPD into disrepute. She did not want the matters to proceed and did not wish to be called again. She did not make a complaint against the Member.

The Law:

Section 77(3)(h) of the *Police Act* defines discreditable conduct as a manner of conduct that the member knows or ought to know will likely bring discredit on the police department.

Count 2 Improper Use or Care of Firearms

That the Member committed improper use or care of firearms contrary to section 77(3)(k) of the *Police Act*.

The Facts:

Items f., g., and h. of The Facts on Count 1 are the facts that apply.

The Law:

Section 77(3)(k) of the *Police Act* defines improper use or care of firearms as failing to use or care for a firearm in accordance with standards or requirements established by law.

The laws that apply are the *Criminal Code of Canada* that provides:

86 (1) Every person commits an offence who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons.

(2) Every person commits an offence who contravenes a regulation made under paragraph 117(h) of the *Firearms Act* respecting the storage, handling, transportation, shipping, display, advertising and mail-order sales of firearms and restricted weapons.

87 (1) Every person commits an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded.

Count 3 Corrupt Practice

That the Member committed corrupt practice contrary to section 77(3)(c)(v) of the *Police Act*.

The Facts:

- l. The Nurse disclosed that she reported being sexually assaulted when a teenager.
- m. The Member and Nurse attended to one mental health call-out during which the Member was compassionate and understanding with the subject and the subject's parents.
- n. The Member prepared his report on the call-out during the shift and filed it at 904pm.
- o. The Member queried the name of the Nurse on the police data bases at 906pm. The Member last accessed the report at 1127pm.
- p. The Member said he queried the Nurse's name to get the correct spelling so he could put in the report as an entity, meaning with first and last names.
- q. The Nurse's full name was not in the report. The Member said that he thought he put her in the report but he was not sure because he is not sure if he was able to confirm that the query result was related to the Nurse.
- r. The general practice for the MHU was to not to use the full name of the nurse or clinician, but rather "the nurse", nurse + first name, or nurse + last name.

The Law:

Section 77(3)(c)(v) of the *Police Act* define corrupt practice as using or attempting to use any equipment or facilities of the municipal police department, or any law enforcement agency, for purposes unrelated to the performances of duties as a Member.

THE FINDINGS

Count 1 Discreditable Conduct

11. The Member denies that he drew his firearm at any time. That fact is not relevant at this stage of the proceeding.
12. Many of the Member's alleged comments and gestures appear to be improper. Had they taken place in a bar or locker room as banter with friends and colleagues perhaps they would be judged by different standards.
13. The conduct of the Member taken cumulatively appears to constitute misconduct within the meaning of the *Police Act*.

Count 2 Improper Use or Care of Firearms

14. The Member did not point his firearm. He had control of the pistol at all times and did not use it in a careless manner. The Nurse never felt threatened or endangered. No gun laws were broken.
15. The conduct of the Member in this allegation was not misconduct. This decision is not open to question or review by any court on any ground, and is final and conclusive.

Count 3 Corrupt Practice

16. If the Member queried the Nurse's name as a legitimate part of the execution of his duties then it would be proper.
17. The Member's purported purpose for making the query was inconsistent with the general use of the names of nurses as entities in reports.
18. The conduct of the Member appears to constitute corrupt practice within the meaning of the *Police Act*.

CONCLUSION and NEXT STEPS

19. I have found that the Member appears to have committed discreditable conduct and corrupt practice.
20. As Discipline Authority I offer the Member a pre-hearing conference. One or more of the corrective measures to be considered include:
- a. Requiring the Member to undertake specified counselling or treatment;
 - b. Requiring the Member to participate in a specified program or activity;
 - c. Reprimanding the Member in writing; or
 - d. Reprimanding the Member verbally.
21. Within 10 days of receipt of this Notification Constable [REDACTED] may file a request under section 119 to call witnesses at a discipline hearing.
22. If Constable [REDACTED] declines a prehearing conference, a discipline hearing must be convened within 40 business days from the date of this Notification. I ask Constable [REDACTED] to advise me whether he will accept the offer of a prehearing conference within 5 business days of the later of:
- a. The expiry of the time for making a request for witnesses under section 119(1); or
 - b. The date of the decision pursuant to section 119(3)(a) rejecting a request to call witnesses.
23. If Constable [REDACTED] does not accept the offer of a prehearing conference within the time frame set out above, the offer is withdrawn and a discipline hearing will be convened within 40 business days of this Notification.



Mark Takahashi,
Judge of the Provincial Court of British Columbia, retired