



Office of the  
Police Complaint Commissioner

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British Columbia, Canada

OPCC File: 2022-22450  
August 30, 2023

**NOTICE OF REVIEW ON THE RECORD**  
Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation against  
Constable Rajbir Thaper of the Surrey Police Service**

To: Constable Rajbir Thaper (#283) (Member)  
c/o Surrey Police Service  
Professional Standards Section

And to: Superintendent Cliff Chastellaine (Discipline Authority)  
c/o Surrey Police Service  
Professional Standards Section

And to: Chief Constable Norm Lipinski  
c/o Surrey Police Service  
Professional Standards Section

**WHEREAS:**

**Investigation**

1. On August 29, 2022, the Office of the Police Complaint Commissioner (OPCC) received information from the Surrey Police Service (SPS) regarding an incident which occurred on August 26, 2022.
2. According to the SPS, Constable Thaper (Member) was the subject of a traffic stop while off duty by the Delta Police Department (DPD). The DPD investigating member noted an odour of liquor on the Member's breath and glossy eyes, and the Member stated that he had consumed one beer an hour and a half prior to the stop. The Member disclosed that he was a SPS member and asked to be let off with a warning after the DPD member advised the Member that he would be reading the Approved Screening Device (ASD) demand.

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Clayton Pecknold  
Police Complaint Commissioner

5<sup>th</sup> Floor, 947 Fort Street  
PO Box 9895 Stn Prov Govt  
Victoria, British Columbia V8W 9T8  
Tel: (250) 356-7458 Fax: (250) 356-6503

Toll Free 1 877-999-8707 # Website: [www.opcc.bc.ca](http://www.opcc.bc.ca)

3. The Member subsequently provided a breath sample that resulted in a “Fail” reading, after which he asked the DPD member to give him a warning “...as this would ruin his life as he was on probation with SPS and would lose his job.” The Member was served with a 90-day Immediate Roadside Prohibition (IRP) and a 30-day Vehicle Impoundment Notice.
4. On September 9, 2022, after reviewing the information forwarded by the SPS, I ordered an investigation into the conduct of the Member pursuant to section 93(1) of the *Police Act* (Act). The allegations enumerated included one count of *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act, for impaired operation of a motor vehicle; one count of *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act, for the Member’s statement to the investigating DPD members regarding the number of alcoholic beverages consumed; and one count of *Corrupt practice*, pursuant to section 77(3)(c)(iii) of the Act, for the Member identifying himself as a SPS member and requesting that the investigating DPD members give him a warning.
5. The SPS Professional Standards investigator, Sergeant Chris Cronmiller, conducted an investigation into this matter. During the course of the investigation, the Investigator identified an additional allegation of *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act, in relation to the Member driving with an expired driver’s license at the time of the incident.
6. On March 9, 2023, the Investigator submitted the Final Investigation Report to the Discipline Authority.
7. On March 23, 2023, pursuant to section 112 of the Act, Inspector Earl Andersen, as the initial Discipline Authority, identified that the following allegations of misconduct appeared to be substantiated against the Member:
  - Allegation #1: *Discreditable Conduct* pursuant to section 77(3)(h) of the Act for driving a motor vehicle while impaired.
  - Allegation #2: *Corrupt Practice* pursuant to section 77(3)(c)(iii) of the Act for seeking favourable treatment.
  - Allegation #3: *Discreditable Conduct* pursuant to section 77(3)(h) of the Act for driving with an expired driver’s license.
8. The initial Discipline Authority found the allegation of *Discreditable Conduct*, as outlined in the September 9, 2022, *Order for Investigation* with respect to the Member’s statement to the investigating DPD members regarding the number of alcoholic beverages he had consumed, was not substantiated.
9. On April 11, 2023, A Prehearing Conference was convened before Inspector Andersen.

10. On April 26, 2023, I rejected the Prehearing Conference agreement. Accordingly, the matter proceeded to a Discipline Proceeding before Superintendent Cliff Chastellaine as the new Discipline Authority.

### **Discipline Proceeding and Proposed Discipline**

11. On June 6, 2023, following the Discipline Proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determinations in relation to the allegations:

- i. That on August 26, 2022, the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the Act for driving a motor vehicle while impaired.

Finding: Substantiated

Proposed Disciplinary Measure – *Five-day suspension without pay.*

- ii. That on August 26, 2022, the Member committed *Corrupt Practice* pursuant to section 77(3)(c)(iii) of the Act for seeking favourable treatment.

Finding: Substantiated

Proposed Disciplinary Measure – *Three-day suspension without pay, to be served concurrently.*

- iii. That on August 26, 2022, the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the Act for driving with an expired driver's license.

Finding: Substantiated

Proposed Disciplinary Measure – *Written reprimand.*

12. In his decision, Superintendent Chastellaine affirmed the initial Discipline Authority's section 112 determination that the Member's statement to the investigating members regarding the number of alcoholic beverages consumed did not appear to constitute *Discreditable Conduct*.

13. The Member was provided a copy of Superintendent Chastellaine's findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures at the Discipline Proceeding. The Member was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Police Complaint Commissioner (the Commissioner) to arrange a Public Hearing or Review on the Record. No request was received.

## Decision

14. Pursuant to section 138(1) of the Act, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.
15. Having reviewed the investigation, the Discipline Proceeding, and associated determinations, pursuant to section 138 of the Act, I have determined that a Review on the Record is required.

*In relation to the Discipline Authority's application of section 126 in proposing disciplinary or corrective measures under section 128*

16. I have concluded, pursuant to section 138 of the Act, 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.
17. Specifically, I have concluded that there is a reasonable basis to believe that the disciplinary or corrective measures proposed do not adequately address the seriousness of the Member's conduct, which includes the Member driving in a significant state of impairment and seeking preferential treatment. Furthermore, it appears that the Discipline Authority has not accorded sufficient weight to the aggravating factors in proposing the disciplinary or corrective measures, which include the fact that the Member's requests for preferential treatment were repeated and direct; specifically, the Member requested a warning prior to the ASD demand, and subsequently requested "police discretion," advised the DPD members that they were "ruining" his life and career, asked the DPD members to let him go, and requested a Sergeant attend the scene directly after the "Fail" reading.
18. Additionally, while the Member's statement to the investigating DPD members regarding the number of alcoholic beverages consumed was not found to have constituted a separate allegation of misconduct, the Discipline Authority failed to assess this statement under section 126 of the Act. In my view, the evidentiary record reasonably supports that the Member knowingly provided misleading information to the investigating DPD members; when asked at the scene if the Member had consumed any alcohol, the Member responded, "one beer an hour and a half ago." The Member subsequently provided a breath sample which registered a "Fail" reading, indicating consumption of alcohol prior to the test would likely have been in excess of one beer. Additionally, during his *Police Act* interview, the Member advised the Investigator that he had consumed two or three alcoholic beverages that night.
19. Furthermore, the Discipline Authority failed to consider the Member's own knowledge of the serious implications of impaired driving given the Member's certification as a Field Sobriety Test Operator.

*Public Hearing is not required*

20. There has been a thorough and complete investigation, and the available material evidence is sufficient that a Review on the Record is appropriate in all of the circumstances.
21. In my view, examination or cross-examination of witnesses is not necessary in this matter as the adjudicator may independently weigh all the available evidence.
22. I have therefore determined that a Public Hearing is not necessary or required in this matter.

*Review on the Record is necessary in the public interest*

23. In determining that a Review on the Record is necessary in the public interest, I have considered several relevant factors, including but not limited to the following:
  - (i) The nature and seriousness of the alleged misconduct: impaired driving continues to be one of the leading causes of death and serious injuries and societal expectations, as reflected in the laws of Canada, demonstrate the seriousness of the conduct. Additionally, attempting to use one's privileged position as a police officer to seek preferential treatment is a serious affront to the public trust.
  - (ii) The disciplinary or corrective measures proposed are inappropriate or inadequate.
  - (iii) The conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints, or the disciplinary process.
  - (iv) The Discipline Authority, in imposing concurrent disciplinary or corrective measures, erred in his interpretation or application of the Act.
24. A Review on the Record is required in the public interest to ensure that the alleged misconduct is reviewed in its totality in light of the seriousness of the allegations of *Discreditable Conduct* and *Corrupt Practice*.
25. Accordingly, pursuant to section 141 of the Act, I am arranging a Review on the Record. The Review on the Record will be confined to the issue of adequacy and appropriateness of the disciplinary or corrective measures imposed by the Discipline Authority.
26. Pursuant to sections 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act and will include all records related to the investigation and the discipline proceeding, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or service record of the member.
27. In arriving at this determination, I have considered that the Adjudicator has the ability to receive submissions:

- (i) Pursuant to section 141(5) of the *Police Act*, the Member, or his agent or legal counsel, may make submissions concerning the matters under review.
- (ii) Pursuant to section 141(6) of the *Police Act*, the Police Complaint Commissioner or his commission counsel may make submissions concerning the matters under review.
- (iii) Pursuant to section 141(7)(b) of the *Police Act*, the Adjudicator may permit the Discipline Authority to make oral or written submissions concerning the matters under review.

**THEREFORE:**

28. A Review on the Record is arranged pursuant to section 138(1) and 141 of the *Police Act*.

Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Elizabeth Arnold-Bailey, retired BC Supreme Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

**TAKE NOTICE** that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

501 - 947 Fort Street, PO Box 9895 Stn Prov Govt, Victoria, BC V8W 9T8  
Telephone: 250-356-7458 • Toll Free: 1-877-999-8707 • Facsimile: 250-356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 30<sup>th</sup> day of August, 2023.



Clayton Pecknold  
Police Complaint Commissioner