

OPCC File No. 2022-22450  
DA File: 2022-021

IN THE MATTER OF A REVIEW ON THE RECORD OF THE  
MISCONDUCT OF CST. THAPER  
OF THE SURREY POLICE SERVICE:  
RULING ON THE ADEQUACY AND APPROPRIATENESS OF DISCIPLINARY OR  
CORRECTIVE MEASURES FOR CST. THAPER'S MISCONDUCT AS PROPOSED BY  
COUNSELS' JOINT SUBMISSION

**RULING BY THE ADJUDICATOR**

TO: Constable Rajbir Thaper, #283, Member, Surrey Police Service  
Professional Standards Unit

AND TO: Ms. Claire E. Hatcher, Counsel for the Member

AND TO: Christopher Considine KC, Counsel to the Police Complaint  
Commissioner

AND TO: Mr. Prabhu Rajan, Police Complaint Commissioner

AND TO: Inspector Earl Anderson, Prehearing Conference Authority  
Surrey Police Service

AND TO: Superintendent Cliff Chastellaine, Disciplinary Authority  
Surrey Police Service

AND TO: Chief Constable Norm Lipinski  
Surrey Police Service

AND TO: Greg Del Bigio KC, Counsel to the Adjudicator

## Introduction

1. This Review on the Record pursuant to section 141 of the *Police Act*, R.S.B.C. 1996 [the *Police Act*], was ordered by the former Police Complaint Commissioner, Mr. Clayton Pecknold [the Commissioner], pursuant to s. 138(1)(b) of the *Police Act*.
2. Its scope is a review of the appropriate disciplinary or corrective measures to be imposed on Cst. Rajbir Thaper [the Member] for his admitted misconduct that occurred on August 26, 2022, (comprised of two instances of Discreditable Conduct and one instance of Corrupt Practice, under s. 77(3)(h) and s. 77(3)(c)(iii) of the *Police Act* respectively) when he was off duty and caught driving while his ability was impaired by alcohol.
3. After I ruled on an evidentiary matter, counsel returned with a 'Joint Submission of Parties on Discipline and Corrective Measures' (Ex. 1) as a proposed resolution for this matter.
4. In their Joint Submission counsel submit that a total disposition of seven and one-half days of unpaid suspension and a written reprimand, allocated between the three instances of misconduct, ought to be accepted as a fair and appropriate outcome in this case.

## The Issues to be Decided

5. There are two issues to be decided in this Review on the Record, which are:
  - A. Whether the law governing joint submissions, as it has been developed in the context of criminal law, should be

incorporated into *Police Act* disciplinary proceedings either with or without modification?

- B. If so, whether the joint submission as made by the parties should be accepted?

### **The Incident Giving Rise to the Member's Misconduct**

6. It is appropriate to provide some additional detail about the incident giving rise to the Member's misconduct and his personal circumstances. In doing so I rely on the facts as set out in the Joint Submission and some additional facts referred to at the recent hearing.
7. The incident arose on August 26, 2022, when the Member, who was off duty and driving his wife's car, was stopped by two Delta Police Department [DPD] officers because the registered owner of the vehicle he was driving had an expired driver's licence. The Member presented his expired driver's licence. When asked by one of the officers if he knew it was expired, the Member replied that he did, but that it was okay because he had an upcoming appointment with ICBC.
8. While questioning the Member one of the DPD officers noted an odor of liquor on his breath, "glossy" eyes, and odd behaviour. When asked if he had consumed any alcohol, the Member stated he had consumed one beer an hour and a half prior to the stop.
9. The Member was directed to the sidewalk. He was asked to provide a breath sample at the roadside. The Member provided a sample of his breath into an Approved Screening Device [ASD], which registered a "fail" reading. The ASD is calibrated to display a "fail" reading when the person supplying the breath sample has a blood alcohol level of more than 100 milligrams of alcohol per 100 millilitres of blood.

10. During conversation, the Member advised the DPD officers that he was a police officer. The Member then asked them for some “police discretion” and a “warning”. They asked the Member who he worked for, and he told them he had quit the RCMP and was now a member of the Surrey Police Service [SPS]. He told them that this incident would ruin his life, pleaded for a warning, and asked them to call their sergeant so he could speak with them.
11. The Member was given the opportunity to provide a second sample but was unsuccessful in producing a valid sample. He was served with a 90-day Immediate Roadside Prohibition and a 30-day Vehicle Impound Notice.

### **Relevant Procedural Background**

12. On September 9, 2022, the Commissioner issued an Order for Investigation into this matter pursuant to s. 93(1) of the *Police Act*. The investigation was to include any potential misconduct as defined in s. 77 of the *Police Act* and to identify any service or policy issues that arose. The Commissioner’s view was that the conduct as alleged against the Member regarding his alleged impaired driving of a motor vehicle, his statements to the DPD officers regarding the amount of alcohol he had consumed, and identifying himself as a police officer and requesting a warning would, if substantiated, constitute misconduct.
13. On September 12, 2022, Sgt. Chris Cronmiller of the SPS Professional Standards Section was assigned to investigate this matter. He was to assess and analyze the evidence to provide an opinion as to whether the Member had engaged in misconduct amounting to violations of the public trust, as defined in s. 77(3) of the *Police Act*.

14. On September 13, 2022, SPS Chief Lipinski designated SPS Inspector Earl Anderson as the Disciplinary Authority in the matter, pursuant to s. 134 of the *Police Act*. Then on March 9, 2023, Sgt. Cronmiller completed his investigation and submitted the Final Investigation Report and the available evidence to Inspector Anderson and the Office of the Police Complaint Commissioner [OPCC].
15. Having assessed the evidence and analyzed the facts gathered during the investigation using the civil standard of proof, Inspector Anderson found that the available evidence appeared to support allegations of misconduct by the Member, which he listed as follows in a Form 2:
- i. Discreditable Conduct in relation to the operation of a motor vehicle while impaired (s. 77(3)(h));
  - ii. Discreditable Conduct in relation to the operation of a motor vehicle without a valid driver's licence (s. 77(3)(h)); and
  - iii. Corrupt Practice in relation to the Member identifying himself as a SPS member and requesting that the investigating member give him preferential treatment by letting him off with a warning (s. 77(3)(c)(iii)).
16. On April 11, 2023, with Inspector Anderson as the Prehearing Conference Authority, a Prehearing Conference [PHC] was convened with the Member and his union agent. At the PHC the following discipline or corrective measures were agreed to and imposed, subject to the approval of the Commissioner:
- i. A **three-day unpaid suspension** for Discreditable Conduct in relation to the operation of a motor vehicle while impaired (s. 77(3)(h));
  - ii. A **two-day unpaid suspension to be served concurrently** for Discreditable Conduct in relation to the operation of a motor vehicle without a valid driver's licence (s. 77(3)(h)); and

- iii. A **written reprimand** for Corrupt Practice in relation to the Member identifying himself as a SPS member and requesting that the investigating member give him preferential treatment by letting him off with a warning (s. 77(3)(iii)).
  
17. On April 26, 2023, the Commissioner advised that he rejected the discipline or corrective measures reached at the PHC as set out above. As a result, Chief Lipinski designated SPS Superintendent Cliff Chastellaine as the Disciplinary Authority for the Disciplinary Proceeding.
  
18. On May 2, 2023, the Disciplinary Proceeding was held in relation to this matter. The Member and his union agent attended. The Member admitted the allegations set out in the Form 2 as listed above.
  
19. On May 11, 2023, the Member provided written submissions as to the appropriate disciplinary or corrective measures to be imposed for his misconduct.
  
20. On May 25, 2023, Superintendent Chastellaine imposed the following disciplinary or corrective measures upon the Member:
  - i. A **three-day unpaid suspension** for Discreditable Conduct for the operation of a motor vehicle while impaired;
  - ii. A **two-day unpaid suspension to be served consecutively** for Discreditable Conduct by the operation of a motor vehicle without a valid driver's licence; and
  - iii. A **written reprimand** for Corrupt Practice for identifying himself as a member of the SPS and requesting the investigating member give him preferential treatment by letting him off with a warning.
  
21. At this point in the process an additional two-day without pay suspension was imposed upon the Member, over and above the original proposed disposition at the PHC that was not approved by the Commissioner.

22. The Commissioner then ordered this Review on the Record, pursuant to s. 138(1) of the *Police Act* because, as stated in the Notice of Review on the Record dated August 30, 2023, he concluded there was “a reasonable basis to believe that the Disciplinary Authority [had] incorrectly applied section 126 of the *Police Act* in proposing disciplinary or corrective measures in this matter [p. 4].”
23. These proceedings have been somewhat protracted due to the considerable number of pre-hearing conferences necessary to deal with the appointment of counsel for the Member, the availability of counsel due to court and other matters, the scheduling of written submissions and hearing dates, and the need to reschedule the June 2024 hearing dates at the request of the Member’s Counsel.
24. In addition, the evidentiary matter raised by the Member’s counsel and opposed by counsel for the Commissioner required written and oral submissions and careful consideration.
25. In a written ruling dated April 8, 2024, I ruled that I was to have an opportunity to see the Form 6 setting out the PHC resolution of this matter to properly assess its admissibility under s. 141(4) of the *Police Act*. The Form 6 was to be produced at the next hearing date with additional submissions to be heard to protect its “confidential” nature until its admissibility could be determined.
26. On July 15, 2024, the next hearing date, counsel for the Commissioner and counsel for the Member presented their Joint Submission on the appropriate disciplinary or corrective measures to be imposed upon the Member for his misconduct. They advised that their joint position to

resolve this matter is the result of careful consideration and extensive discussions.

27. Counsel for the Commissioner advised that he was unable to find any precedents relating to the suitability of resolving cases such as this by way of joint submission, although he recalled one such result from twenty-five years ago.

### **Position Advanced in Counsels' Joint Submission**

28. In their written joint submission counsel submit the following (at para. 2) for serious consideration:

The Parties, having each considered all the factors set out in s. 126 of the *Police Act*, submit that an unpaid suspension of 7 ½ days plus a written reprimand is the fair and appropriate outcome in this matter. The breakdown according to the three (3) allegations set out in the Form 2 [...] would be as follows:

- a) Discreditable Conduct, in relation to section 77(3)(h) of the *Police Act* in relation to the operation of a motor vehicle while impaired;
  - **5 days unpaid suspension;**
- b) Discreditable Conduct, in relation to section 77(3)(h) of the *Police Act* in relation to the operation of a motor vehicle without a valid driver's licence;
  - **2 ½ days unpaid suspension**, to be served consecutively; and
- c) Corrupt Practice, pursuant to section 77(3)(c)(iii) of the *Police Act* in relation to Cst. Thaper identifying himself as an SPS member and requesting the investigating member give him preferential treatment by letting him off with a warning;
  - **Written reprimand.**

29. In their Joint Submission (at pp. 7-8), counsel jointly addressed the aggravating and mitigating circumstances contained in s. 126(2) of the *Police Act* that they considered relevant:



- a) **Seriousness of the Misconduct**  
Constable Thaper accepts that his misconduct is serious. Impaired driving continues to be one of the leading causes of death and serious injuries on Canadian roadways. As a police officer, he must be held to a high standard in obeying the law and not doing anything to risk public safety. Constable Thaper also accepts that his conduct in directly and repeatedly seeking preferential treatment from the DPD is serious, notwithstanding how desperate and panicked he was at the time.
- b) **Member's Record of Employment**  
Constable Thaper was previously an RCMP officer for approximately one (1) year of service when he resigned and was hired by the SPS. At the time of the incident in question Constable Thaper was a new employee with the SPS. During his time as a police officer with the RCMP and SPS he had a perfect employment record.
- c) **Impact on Member, Family and Career**  
The incident and proceedings have had a significant impact on Constable Thaper, profoundly impacting him and his family. His family relationships have been strained and the delay has increased this strain. The experience of *Police Act* proceedings itself is likely to be corrective.
- d) **Likelihood of Future Misconduct**  
Given the impact that this matter has had on Constable Thaper, given his demonstrated remorse, and given that he has accepted full responsibility for his actions, the likelihood of future misconduct on the part of Constable Thaper is low.

30. Counsel have also provided a review the dispositions of similar police misconduct in 10 other cases. Those cases show the following ranges of discipline or corrective measures:

- Discreditable Conduct related to impaired driving: Suspensions ranging from three to 10 days;
- Discreditable Conduct related to seeking preferential treatment: Suspensions ranging from two to four days;
- Corrupt Practice related to seeking preferential treatment: Suspensions up to four days.

31. In relation to the above dispositions, I note several things. First, although not expressly stated, I assume all suspensions were without pay. Secondly, seeking preferential treatment may give rise to misconduct characterized as Discreditable Conduct or Corrupt Practice.

**a) Joint Submissions as to Disposition and the *Police Act***

32. The decision of the Supreme Court of Canada in *R v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*], sets out what a criminal court is to follow when it receives a joint submission from the Crown and defence as to a particular sentence. *Anthony-Cook* sets out the basic legal test for a judge to apply when considering whether to adopt the sentence proposed in the joint submissions. This test has been adopted in other contexts.

33. In *Anthony-Cook*, Justice Moldaver for the Court, held that the judge may decline to impose the sentence recommended in the joint submission, but they must follow a specific procedure that includes advising counsel of their concerns, permitting counsel to make further submissions, and writing clear and cogent reasons as to why they declined to do so. In some instances, an accused may be permitted to withdraw their guilty plea.

34. The Court in *Anthony-Cook* found that the proper legal test to be applied when considering a joint submission as to sentence is the “public interest” test. Under this test the judge should not depart from a joint submission on sentence “unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest” [at para. 32].

35. The Court also referred to two decisions from the Newfoundland and Labrador Court of Appeal to provide additional guidance as to how the

public interest test ought to be applied when considering a joint submission:

[33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts”.

[34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold— and for good reason, as I shall explain. [Emphasis added.]

36. The Supreme Court of Canada considered joint submissions again six years after *Anthony-Cook* in *R v Nahanee*, 2022 SCC 37 [*Nahanee*]. *Nahanee*, a case to which I was not directed by counsel, is important when considering joint submissions.

37. In *Nahanee* the Court recognized the importance of joint submissions to the fair and efficient functioning of the criminal justice system and again affirmed that judges must follow a “stringent test” in deciding whether to reject a joint submission.

38. In this regard, the Court held:

[1] Where the Crown and the defence propose a specific agreed-upon sentence to a judge in exchange for an accused's guilty plea, a stringent test, known as the "public interest" test, exists to protect that submission. The test, adopted by this Court in *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204, instructs judges not to depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise contrary to the public interest. Sentencing judges must not reject a joint submission lightly. They should only do so where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. [Emphasis added.]

[2] The stringency of this test is designed to protect the unique benefits that flow from joint submissions. It provides the parties with a high degree of certainty that the sentence jointly proposed will be the sentence imposed, and it avoids the need for lengthy, costly, and contentious trials. As a rule, joint submission sentencing hearings are expeditious and straight forward. They save precious time, resources, and expenses which can be channeled into other court matters. In short, they enable the justice system to function efficiently and effectively.

39. The benefits of resolutions by way of joint submission, including a high degree of certainty as to outcome, and the saving of time and other resources as recognized in *Nahanee*, have resulted in its basic procedure and principles being incorporated into some regulatory regimes, including the regulation of professionals.
40. Given the lack of reported cases for the resolution of a s. 141 Review on the Record under the *Police Act* by way of a joint submission, counsel in this case have referred me to Rule 5-6.5 of the Law Society of British Columbia Rules and several disciplinary cases involving lawyers' misconduct.
41. Rule 5-6.5 regarding 'Admission and consent to disciplinary action' reflects a sound application of the law and procedure in relation to the use of joint submissions for lawyers' disciplinary matters in BC. It states:

5-6.5 (1) The parties may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

(2) If the panel accepts the agreed statement of facts and the respondent's admission of a discipline violation

- (a) the admission forms part of the respondent's professional conduct record,
- (b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and
- (c) the Executive Director must notify the respondent and the complainant of the disposition.

(3) The panel must not impose disciplinary action under subrule (2)(b) that is different from the specified disciplinary action consented to by the respondent unless

- (a) each party has been given the opportunity to make submissions respecting the disciplinary action to be substituted, and
- (b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice. [Emphasis added.]

(4) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

42. Among the Law Society decisions referred to by counsel in their Joint Submission is *Palmer (Re)*, 2024 LSBC 2 (CanLII) [*Palmer*]. In that decision [at para. 42] the Panel states the effect of Rule 5-6.5(3)(b) to be as follows:

[...] a hearing panel is prohibited from imposing disciplinary action different from the specified disciplinary action to which the Law Society and the Respondent have agreed unless the proposed disciplinary action is contrary to the public interest in the administration of justice. [Emphasis added.]

43. Other Law Society decisions referred to in *Palmer* [at para. 46] set out four broad categories to be considered in determining what proposed disciplinary action is appropriate for lawyers who have engaged in misconduct. Included is "public confidence in the legal profession including public confidence in the disciplinary process."

44. I now turn to the issue of adopting a joint submission in relation to a review on the record under the *Police Act*.
45. The purposes and objectives of sentencing in the criminal justice system (and indeed the regulation of professionals), are different than the purposes and objectives regarding discipline under the *Police Act*. Judges imposing a sentence must adhere to the relevant statutory provisions of the *Criminal Code*, whereas an adjudicator imposing disciplinary or corrective measures must adhere to the relevant provisions of the *Police Act*. That said, the benefits to the public as well as benefits to the parties of joint submissions identified in *Nahanee* apply equally to *Police Act* proceedings.
46. Thus, there is good reason for adjudicators under the *Police Act* to also be bound by “a stringent test, known as the public interest test” to protect joint submissions (*Nahanee*, at para.1). However, they should only do so “where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system” (*Nahanee*, at para. 1). Importantly, this process does not erode the final authority of an adjudicator to reject a joint submission in the event that the proposed disposition is not in the public interest.
47. Further, it is expected that in cases in which a joint submission is proposed, counsel will address the aggravating and mitigating factors set out in s.126(2) of the *Police Act*, which are:
- (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, the member’s service

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

- c) the impact of the proposed disciplinary or corrective measures on the member and on the member's 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.

48. Section s.126(3) of the *Police Act* injects an additional consideration to be factored in into the mix when a joint submission is being tendered. Any consideration of a joint submission for *Police Act* matters requires that if disciplinary or corrective measures are necessary, an approach "that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute." This provision in no way precludes other considerations such as denunciation and deterrence in appropriate circumstances.

49. Turning to PH:2016-01 OPCC File: 2011-6657/2012-8138 (decided June 20, 2023), which focuses on the phrase in s. 126(3) "would bring the administration of police discipline into disrepute", Adjudicator McKinnon wrote the following about the public interest:

[15] In her reasons regarding the disciplinary or corrective measures in The Matter of Cst. Ludeman and Cst. Logan, PH 19-01, dated 11 June 2021, Adjudicator Baird Ellan wrote at para. 7 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."

[16] The issue of whether proposed measures would "bring the administration of police discipline into disrepute" under s. 126(3) is 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: *The Matter of Cst. Steen*, at para. 48.

50. I note that Adjudicator McKinnon was addressing the phrase "bring the administration of police discipline into disrepute" from s.126(3) of the *Police Act*, and not in the context of joint submissions. However, the reasonable, dispassionate, and informed person described by Adjudicator McKinnon is very similar to the "reasonable and informed person" described by the Supreme Court in *Nahanee*, above.

51. The "public interest" is a multi-dimensional concept depending on what activity is being assessed. For example, the Supreme Court of Canada in *Anthony-Cook* (at para. 32) stated that a judge should not depart from a joint submission on sentence "unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest". This phrase recognizes that there may be other ways a proposed disposition may be contrary to the public interest.

52. Therefore, the public interest to be considered in determining whether a proposed disposition in a joint submission for *Police Act* matters is essentially the same as the test articulated in *Nahanee*, except that the public interest in these matters is, in my view, broader than the laudable aims of the *Police Act* relating to police discipline, as referred to by Adjudicator Baird Ellan, and quoted above in the context of s. 126(3).

53. This is because for a joint submission as to disposition in a *Police Act* matter to be rejected according to *Nahanee*, an adjudicator "should only



do so where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system”.

54. The public interest in the imposition of appropriate disciplinary or corrective measures for police officers found to have engaged in misconduct is an important component of a larger public interest. The test in *Nahanee*, by referring to “a breakdown in the proper functioning of the justice system”, casts much wider net, and requires that the broader and critically important aspects of the public interest in relation to policing be incorporated. To my mind, these include public respect for the police in the communities where they serve, the fundamentally important role the police play in engendering in the public a respect for the law and the fair and proper administration of justice, confidence in the police members as persons who are trustworthy, honest, possess integrity, and law-abiding themselves.
55. When police officers engage in misconduct they erode public respect for the police and diminish the public’s confidence in their effectiveness and professionalism. Police officers who engage misconduct by engaging in acts that violate the law, undermine the respect of the public for the law.
56. When dealing with joint submissions regarding dispositions for police misconduct under the *Police Act*, it is important that adjudicators consider the wider role the police play in our justice system and society at large as they inform the concept of public interest. This is because the “public interest test”, described as “a stringent test”, exists to protect the joint submission (*Nahanee*, at para. 1). This means that an arguably higher test for rejecting joint submissions is in place (“breakdown in the proper functioning of the justice system”), as opposed to the language contained in *Anthony-Cook* (“would bring the administration of justice into disrepute or is otherwise contrary to the public interest”). Rejecting a joint

submission must be grounded in “a breakdown in the proper functioning”, the “proper functioning” being in the public interest.

57. Therefore, to conclude I find that joint submissions should be incorporated into *Police Act* disciplinary proceedings with a modified “public interest test” that arises from the Supreme Court of Canada decision in *Nahanee*. This test takes into account the specific public interest in maintaining high quality policing standards and a strong and transparent administration of police discipline, coupled with recognition of the fundamentally important role the police occupy in maintaining the public’s respect for the law and the fair and proper administration of justice.

58. I respectfully suggest the following:

In disciplinary proceedings under the *Police Act* an adjudicator should accept a joint submission unless the proposed disposition would be viewed by reasonable and informed persons as a breakdown in the maintenance of high policing standards, the proper administration of police discipline, and the proper functioning of the police as an integral part of the administration of justice.

## **B. Should the Joint Submission for Disposition of the Member’s Misconduct be Accepted?**

59. The Member has admitted his misconduct.

60. I note that s. 77(1)(b)(ii) of the *Police Act* defines “misconduct” to include “a disciplinary breach of public trust described in subsection (3) of this section.” The misconduct admitted by the Member, which includes two instances of “discreditable conduct” by operating a motor vehicle while impaired and operating a motor vehicle without a valid driver’s licence, is defined by s. 77(3), which states:

(h) “discreditable conduct”, 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 ...”

61. The misconduct admitted by the Member also includes one instance of “corrupt practice” by identifying himself as a SPS member and requesting the investigating member give him preferential treatment by letting him off with a warning, as defined in s. 77(3)(c)(iii), which states:

(c) “corrupt practice”, which is

[...]

(iii) using or attempting to use one’s position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member;

[...]

62. In considering whether it is contrary to the public interest to impose the disposition put forward by counsel for the Member’s misconduct I have carefully considered the following:

- The Member has been through very lengthy proceedings in relation to his misconduct and admitted the three disciplinary breaches from the outset;
- Counsel for the Commissioner and counsel for the Member, both very experienced in this area, engaged in extensive discussions that have resulted in the proposed disposition;
- I note that the present case, while serious, is certainly not the most egregious in terms of this type of misconduct. The Member has no history of police misconduct, including impaired driving or driving without a valid driver’s licence.

- While the Member sought preferential treatment when stopped by the DPD officers, his response was one of genuine panic given his personal circumstances, albeit his misfortune was of his own making;
- While I might have structured the disposition somewhat differently given my incredulity regarding the Member's lack of a valid driver's licence, the proposed disposition of a seven and one-half day suspension without pay and a written reprimand arising from this incident is within the range of dispositions imposed on other similar cases.
- A total unpaid suspension of the length proposed here is a significant one, and given the amount that the Member typically makes per day, it will most definitely be a penalty and a deterrent to any future misconduct;
- I accept that the length of time until the final resolution of this matter has added additional stress and uncertainty for the Member and his family;
- Pursuant to s.126(3) I have considered that it "would bring the administration of police discipline into disrepute" to impose anything other than disciplinary measures in this case; and
- Considering the Member's demeanour and responses at the recent hearing, I accept that he is ashamed of his behaviour and motivated to be worthy of the respect and trust usually afforded to police officers by the community they serve.

63. In this case I accept the Joint Submission as to disciplinary measures to be imposed upon the Member. In doing so I do not find that the proposed disposition would be viewed by reasonable and informed persons as a breakdown in the maintenance of high policing standards, the proper administration of police discipline, and the proper functioning of the police as an integral part of the administration of justice.

64. Therefore, I impose upon the Member the disposition of this matter as proposed by counsel in the Joint Submission, which is for:

a) Discreditable Conduct, in relation to section 77(3)(h) of the *Police Act* in relation to the operation of a motor vehicle while impaired:

- **5 days unpaid suspension;**

b) Discreditable Conduct, in relation to section 77(3)(h) of the *Police Act* in relation to the operation of a motor vehicle without a valid driver's licence:

- **2 ½ days unpaid suspension**, to be served consecutively; and

c) Corrupt Practice, pursuant to section 77(3)(c)(iii) of the *Police Act* in relation to the Member identifying himself as an SPS member and requesting the investigating officer give him preferential treatment by letting him off with a warning:

- **A Written reprimand.**

65. I am indebted to both counsel for their useful and interesting submissions and their efforts in reaching a joint position as to disposition.

66. Finally, I wish to advise the Member that he ought not to conduct himself in a manner that attracts any further findings of police misconduct.

Reviewing the summaries of similar cases provided by counsel, those members with repeat findings of misconduct of this type face very significant consequences. The public is entitled to expect that police members possess valid driver's licences and do not operate motor vehicles while their ability is impaired by alcohol. I note that the Member is an officer with relatively little experience. If he wishes to continue to serve

his community by working as a police officer his future conduct should be exemplary.

Dated at the City of Kelowna, British Columbia, this 6 day of September, 2024.

*Elizabeth A. Arnold-Bailey*

The Honourable Elizabeth A. Arnold-Bailey (BCSC Ret'd)  
Adjudicator