PH File No.: 2023-01
OPCC File: 2019-17245

**IN THE MATTER OF THE
PUBLIC HEARING INTO THE COMPLAINT AGAINST
SERGEANT RON KIRKWOOD
A MEMBER
OF THE VICTORIA POLICE DEPARTMENT**

Public Hearing Counsel -	Bradley Hickford
Agent for Sergeant Ron Kirkwood -	Kevin Woodall
Counsel for the Commissioner -	Christopher Considine, K.C.
Counsel for the Adjudicator -	Patrick M. McGowan, K.C.
Counsel for the National Police Federation -	Brock Martland, K.C. and Trevor Martin
Counsel for the British Columbia Police Association -	Claire Hatcher
Counsel for the Independent Investigations Office of B.C. -	Martin Allen
Counsel for the Victoria Police Department -	Anila Srivastava
The Rauch Family (Complainants)	
Dates of Hearing -	April 15, 16, 17, 18, 29, 30, May 1, 2, 3, 8, July 9, 10, September 9, 10, 11, 12, 2024, May 23, June 6, 2025
Date of Decision -	June 12, 2025

Adjudicator's Recommendations

INTRODUCTION

1. Section 143(9)(c) of the *Police Act* (the "*Act*") directs that, in addition to adjudicating the allegations set out in the Notice of Hearing, I recommend to the Chief Constable or the Board of the Municipal Police Department any changes in policy or practice that I consider advisable.

2. The *Act* only permits me to make recommendations to the Chief Constable or the Board of the Victoria Police Department ("VicPD"). My consideration of potential recommendations is based primarily on the evidence led during this hearing and the helpful submission received from the parties.

3. I received submissions respecting potential recommendations from Public Hearing Counsel, Commission Counsel, Sgt. Kirkwood's agent and the Rauch family. Matters relevant to the potential recommendations were also addressed in submissions by the National Police Federation, the British Columbia Police Association, the Independent Investigations Office ("IIO") and the Victoria Police Department ("VicPD"), each of whom I granted standing to make submissions.

4. The discussions and recommendations below should be read in conjunction with my review of the evidence and discussion found in my decision, which was delivered on May 23, 2025

BODY WORN CAMERAS

5. Commission counsel and the Rauch family have urged that I make a recommendation that the Victoria Police Department implement a policy mandating that on-duty police officers be equipped with body worn cameras.

6. The Court, in *Wood v. Schaeffer*, in discussing the importance of police notes, observed:

> The purpose of notes is not to explain or justify the facts, but simply to set them out. Indeed, until human ingenuity develops a technology that can record sights, sounds, smells and touch, an officer's notes are effectively the next best thing (para. 76).

7. Technology now exists that can reliably create a high-quality recording of sights and sounds from the officer's perspective. I am told that other police forces in North America have implemented this technology, and that the technology is currently being tested by the Delta and Vancouver police departments.

8. Fifteen years ago, following the incident that resulted in the tragic death of Robert Dzienanski, a report authored by the chair of the Civilian Review and Complaints Commission endorsed the implementation of body worn camera technology. The author of that report noted the following:

> In the circumstances of this case, there would have been a clear benefit to video footage capturing the events from the members' perspectives. Although the Commission had the benefit of a non-police-generated video, there is no doubt that a system that would allow all "to see and hear the event unfold through the eyes and ears of the officer at the scene," would be the best of all possible options.

9. Similarly, there is no doubt that my consideration of the use of force allegation at issue in this public hearing would have benefited from body worn camera footage had it been available.

10. Since at least 2019, in anticipation of forces in British Columbia implementing the use of body worn cameras, the Provincial Policing Standards have contained provisions respecting the use of these devices (Standard 4.2.1).

11. Body worn cameras are an important tool that can serve to enhance trust and transparency in policing and can be utilized as an accountability tool for police conduct. They can also serve an important evidence-gathering function.

12. I am satisfied that body camera footage will aid in fact-finding exercises and provide valuable protection to police officers and the public. Given the advancements in technology that now allow high quality video and audio recording by a device that is small and light enough that it does not materially interfere with an officer's ability to carry out his or her duties, I see no justification for the VicPD failing adopt a policy requiring its officers to utilize this technology.

13. I am told by the VicPD that they anticipate body cameras to be part of their force's equipment in the coming years. I urge them to attach priority to the acquisition and implementation of this technology.

> ***I recommend that the Victoria Police Board, on a priority basis, take steps to ensure that the VicPD acquire and implement the use of body worn cameras by its front-line officers in accordance with Provincial Policing Standard 4.2.1.***

TREATMENT OF THE NOTES OF SUBJECT OFFICERS

14. As I discuss in my decision regarding the neglect of duty allegation in the Notice of Public Hearing, I am of the view that all officers, including officers who are the subject of an investigation by the IIO, have a duty to complete detailed and contemporaneous notes.

15. Several other provinces, including Ontario, have enacted legislation containing provisions setting out the obligation of subject officers to make notes and reports and addressing the treatment of those notes and reports once made. It is unfortunate that in British Columbia, police forces have been left to navigate this landscape without legislative guidance.

16. Previously, a memorandum of understanding ("MOU") between the IIO and police chiefs addressed the treatment of the notes of subject officers. The current MOU does not do so.

17. In 2020, the Chief Civilian Director ("CDD") of the IIO published a "Guidelines and Expectations" document. This document addresses the designation of officers in IIO investigations as either subject or witness officers. It also directs that all involved officers must create timely and comprehensive notes, but currently, it does not require subject officers to submit their notes and reports to the IIO. I question the wisdom of leaving the development of guidelines regarding the handling of the notes of subject officers to the body that is charged with investigating them.

18. The VicPD policy respecting notes has been updated since the incident which led to the calling of this Public Hearing. The policy now clarifies that all officers are required to "complete notes prior to consulting counsel, consistent with the duty set out in *Wood v. Schaeffer*". The policy also provides that the notes of "subject officers" in IIO investigations "will be privatized in PRIME and not disclosed to the IIO". The policy goes on to provide that the officer may voluntarily submit their notes to the IIO.

19. While it is clear that all subject officers must complete notes, there remains a question of whether a subject officer's *Charter* rights to silence and against self-incrimination render these notes beyond the reach of the IIO and, ultimately, Crown counsel.

20. The Supreme Court of Canada declined to resolve the issue of the treatment of the notes of subject officers in *Wood v. Schaeffer*:

> [30] Nor has any party questioned whether the right to silence or the common law confessions rule prevents an officer's notes from being used against that officer in a subsequent criminal prosecution. Accordingly, I refrain from expressing any opinion on those issues.

21. In *R v. Schertzer*, 2007 CanLII 38577, the accused were police officers charged with offences against the administration of justice, including the making of false notes. The officers asserted their right to be free from self-incrimination and took the position that the notes were not admissible on the basis that they were made under compulsion. The court, in admitting the notes, set out the following analysis:

[14] In this case, the obligation to make notes arises from the individual's employment as a police officer. At the risk of stating the obvious, no one is compelled to become a police officer. Persons make a free decision to become police officers, and they do so with full knowledge of what that decision entails. Persons deciding to become police officers surely know that their actions as police officers will be subject to scrutiny in a variety of ways, including by their superiors, by their fellow officers, by the public, by the media and by the courts. The training that individuals go through in order to become police officers fully informs those persons regarding their duties and obligations as such.

[15] This point was made by the Court of Appeal in *Police Complaints Commissioner v. Kerr and Wright*, 1997 CanLII 1106 (ON CA), (1997), 96 O.A.C. 284, where the use of police officers' notes in police complaint proceedings was considered. Madam Justice Weiler said, at para. 12:

> "The coercion imposed on the persons making the report was indirect, as it arose only after a conscious choice was made to be part of a regulated group. The requirement to make notes was not an obligation imposed on the officer through the denial of free and informed consent between the state and the individual. Police officers are required to make notes of their dealings with others, and persons who become police officers are aware of the obligation to keep notes when making their decision to join the profession. The mere possibility that the information the officers record in their notebooks may later be used in an adversarial proceeding does not mean that the state is guilty of coercing these individuals to incriminate themselves."

[16] It is also useful to remember the purpose that underlies the requirement that police officers make notes of their actions, to which I earlier referred. Police officers are given broad and extensive powers over their fellow citizens. It is important, therefore, that an accurate record of their use of those powers be made so that, among other things, at any later date, the manner in which they exercised those powers can be reasonably assessed. The requirement to make notes serves to protect both the officer and the citizen by requiring a contemporaneous record to be made of the events in which the officer is involved. The notes also assist in the proper prosecution of criminal and other offences because they are intended to provide a reliable and timely record of the events underlying those offences.

…

[38] Finally, consideration was given in *Fitzpatrick* to the effect on the public interest in applying or not applying the principle against self-

> incrimination to the fishing reports. I have already referred to the public interest in having a record of the conduct of police officers in the performance of their duties. I would think that most members of the public would be troubled at the prospect that the very record that police officers are required to keep detailing their actions as police officers could not be used as evidence of misconduct, if it were so, by an officer in the performance of his or her public duties.

22. In *R. v. Bentley*, 2013 BCSC 1124, McEwan, J, in obiter, referred to the above analysis from *Schertzer* as “rather persuasive and useful”.

23. More recently, in *Procureur général du Québec c. Fédération des policiers et policières municipaux du Québec*, 2024 QCCA 537, the Quebec Court of Appeal appears to have come to a different conclusion, holding that, while officers subject to an investigation by the Quebec equivalent of the IIO were required to prepare a written account, provisions requiring such officers to submit their written account to the investigative body infringed the officer's right against self-incrimination.

24. Ideally, the provincial government, bearing in mind the importance of transparency and public accountability, while also acknowledging the *Charter* rights of police officers, will provide legislative guidance.

25. In the absence of legislation governing the treatment of the notes of subject officers, recognizing that the right against self-incrimination is context-specific, and given the uncertain legal landscape, I am of the view that the issue of the treatment of a subject officer’s notes is best left to be resolved by the courts.

26. Until the province introduces legislation addressing this issue, or the issue is definitively resolved by the courts, the approach taken by the VicPD in their current policy respecting police journals and notebooks (exhibit 29 on this hearing) seems sensible to me. It ensures that a timely and detailed account is recorded by all officers, including subject officers; it acknowledges that the *Charter* rights of a subject officer may protect the officer’s account in their notes from use in a criminal investigation of the officer; and it preserves the notes should the IIO, Crown counsel or some other body

wish to take the matter up in court and seek production of the notes, including on the basis of an assertion that the *Charter* does not prevent their use.

27. Having observed that, ideally, each force should not be left to navigate this uncertain landscape with out legislative guidance and having noted that it seems less than optimal for the obligations of subject officers to be set out in a "Guidance and Expectations" document authored by the CCD of the IIO, it is my hope that the province will consider implementing legislation, as several other provinces have, setting out a legal framework for the treatment of the notes and reports of subject and witness officers.

> ***I recommend that the Chief Constable of the VicPD communicate with the Minister of Public Safety and Solicitor General and encourage the Province to provide legislative guidance regarding the designation of officers subject to investigation by the IIO and the treatment of the notes and reports prepared by officers designated by the IIO as subject and witness officers.***

COMMUNICATION WITH INJURED PARTIES, FAMILY MEMBERS AND SUBJECT OFFICERS

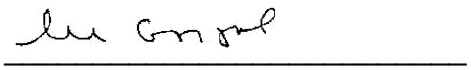
28. During the course of the hearing, it became apparent that the manner in which the VicPD and the IIO communicated and dealt with the Rauch family left much to be desired. There were delays in providing information, communications that could be described as lacking in sensitivity and multiple instances of misinformation being communicated to the family. A family that has suffered a traumatic loss where the police are involved is entitled to better and more compassionate treatment.

29. I also learned that the manner in which the VicPD communicated with Sgt. Kirkwood was lacking in sensitivity. For example, he learned that Ms. Rauch had died as a result of the ARWEN deployments via a text message.

30. I understand that both the VicPD and IIO want to learn from the experiences of the Rauch family and do better in the future.

> ***I recommend that the Chief Constable of the VicPD and the Victoria Police Board review the experiences of the Rauch family and Sgt. Kirkwood and develop a policy that provides for reliable, timely, accurate and sensitive communications with, and support for, the injured party (where applicable), the family members of an injured or deceased individual, and the officer(s) involved in traumatic events which trigger an IIO investigation.***

Recommendations delivered at Victoria, British Columbia, this 12 day of June, 2025.



The Honourable Wally Oppal K.C. – Adjudicator