



Office of the  
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2019-16234  
January 22, 2024

**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  
a member of the New Westminster Police Department**

To: [Name Withheld] (Member)  
c/o New Westminster Police Department  
Professional Standards Section

And to: Deputy Chief Constable Fiona Wilson (Discipline Authority)  
c/o Vancouver Police Department  
Professional Standards Section

And to: Chief Constable Dave Jansen  
c/o New Westminster Police Department  
Professional Standards Section

**WHEREAS:**

**Investigation**

1. On April 29, 2019, the Office of the Police Complaint Commissioner (OPCC) received information from the New Westminster Police Department (NWPD) in relation to an incident which occurred in 2017. According to the NWPD, it was alleged that [name withheld] (Member) made inappropriate sexual advances towards a female NWPD employee, including physical touching of the employee without her consent.
2. On May 3, 2019, after reviewing the information forwarded by the NWPD, I ordered an external investigation by the Vancouver Police Department (VPD) into the conduct of the Member pursuant to section 93(1) of the *Police Act* (Act). The investigation was suspended to avoid prejudicing a related criminal investigation.

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. On May 6, 2019, the OPCC received further information from the NWPDP alleging that the Member made inappropriate sexual advances towards another female NWPDP employee on or between March 2018 and March 2019.
4. On May 8, 2019, after reviewing the additional information from the NWPDP, I ordered a further external investigation by the VPD into the conduct of the Member pursuant to section 93(1). The investigation into this matter was also suspended to avoid prejudicing the related criminal investigation.
5. On September 10, 2019, I designated then-Superintendent Fiona Wilson of the VPD to exercise the powers and perform the duties of a Discipline Authority in relation to both investigations, pursuant to section 135(1) of the Act.
6. On February 14, 2020, the suspension of the investigations into these two matters were lifted, and the two investigations were merged into one.
7. VPD Professional Standards investigator, Sergeant Gary Hiar, conducted an investigation into this matter and on September 29, 2020, he submitted the Final Investigation Report (FIR) to the Discipline Authority.
8. On October 14, 2020, following her review of the FIR, the Discipline Authority notified the Member that a Discipline Proceeding would be held in relation to the substantiated allegations, namely that the Member was alleged to have committed two counts of *Discreditable Conduct* with respect to his comments and behaviour towards NWPDP employees.

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

9. On November 8, 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 the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* with respect to the comments and behaviour directed at a NWPDP [employee].  
  
Proposed Disciplinary Measure - Reduction in Rank
  - (ii) That the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* with respect to the comments and behaviour directed at NWPDP [employees].  
  
Proposed Disciplinary Measure - Reduction in Rank
10. In arriving at the proposed discipline, the Discipline Authority found that the Member's actions were "very serious," "predatory in nature," and amounted to a "high-range level" of

misconduct. The Discipline Authority specifically noted that the Member was in a position of authority and the affected persons were vulnerable relative to the Member's position.

11. The Discipline Authority went on to find that the Member only accepted partial responsibility for his actions, and she was not able to determine with any certainty the likelihood to which the Member would commit misconduct in the future.

### **Request for Public Hearing or Review on the Record**

12. The Member was provided a copy of the Discipline Authority'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 from the Member.
13. On December 7, 2023, I received and reviewed correspondence from legal counsel representing the Member's employer in this matter setting out its legal and practical concerns with respect to the proposed disciplinary and corrective measures, including their workability and impact given the employer's human rights and WorkSafeBC workplace obligations. While I reviewed this correspondence, I have come to my determination based solely and independently on the record of proceedings.

### **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. I have reviewed the record of the disciplinary decision, the associated determinations pursuant to section 138 of the Act, and I agree that the Discipline Authority's determination as to whether misconduct has been proven is correct pursuant to section 125(1) of the Act. The Discipline Authority conducted the proceeding according to the Act with due fairness to the Member and applied the appropriate level of analysis to the evidence.
16. However, I have concluded that there is a reasonable basis to believe 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 reflect the seriousness and circumstances of the Member's conduct; namely that the member used his rank and position of power within the NWPD to engage in an ongoing pattern of non-consensual behaviour of a sexual nature towards junior and vulnerable employees of the NWPD which the Discipline Authority described as "predatory" in nature.

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18. In addition, in my view the workability of the proposed disciplinary or corrective measures, including their effect on employees of the NWPDP, as contemplated by section 126(3) of the Act, was not sufficiently considered.
19. Specifically, the Member in this proceeding is a senior police officer who holds a supervisory rank and leadership role within the NWPDP. The proposed disciplinary or corrective measures would potentially allow the Member to re-enter the workplace, notwithstanding the Discipline Authority's findings that the Member used his rank, position, and seniority to "facilitate a pattern of predatory behaviour." This has the potential to bring the administration of police discipline into disrepute as contemplated by section 126(3).
20. Accordingly, I have a reasonable basis to believe that the Discipline Authority has incorrectly applied section 126 by adopting an approach that does not sufficiently consider its workability and whether such an approach would bring the administration of police discipline into disrepute.
21. I have further determined that a Public Hearing is not necessary in this matter. There has been a thorough and complete investigation, a thorough and lengthy discipline proceeding, and the available evidence is sufficient that a Review on the Record is appropriate in all of the circumstances. Additionally, examination or cross-examination of witnesses is not necessary in this matter as the adjudicator may independently weigh all of the available evidence.
22. 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 under section 126 of the Act.
23. 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.
24. 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.

25. It is therefore alleged that the Member committed the following disciplinary default, pursuant to section 77 of the *Police Act*:

- (i) *Discreditable Conduct* pursuant to section 77(3)(h) of 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. Specifically, the comments and behaviour of the Member directed at a NWPDP employee.
- (ii) *Discreditable Conduct* pursuant to section 77(3)(h) of 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. Specifically, the comments and behaviour of the Member directed at female NWPDP employees.

**THEREFORE:**

26. A Review on the Record is arranged pursuant to section 137(1) and 143(1) of the Act.

27. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Carol Baird-Ellan, K.C., retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the Act. Dates for the Review on the Record have not yet been determined. The Review on the Record will commence at the earliest practicable date.

28. The Member and affected persons have not been identified in this order so the Adjudicator may consider her authority under of section 150 of the Act with respect to any privacy interests or other considerations related to this matter including but not limited to the privacy of any past or present NWPDP employees.

**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 22<sup>nd</sup> day of January, 2024.



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