



Office of the
Police Complaint Commissioner

British Columbia, Canada

RR: 2024-02
OPCC File: 2022-22122

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 Samuel Cheung of the Vancouver Police Department**

To: Constable Samuel Cheung (#2512) (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Superintendent Trevor Burmachuk (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On July 4, 2022, the Office of the Police Complaint Commissioner (OPCC) received information from the Vancouver Police Department (VPD) in relation to an incident which occurred on July 2, 2022.
2. According to the VPD, they were notified by the Delta Police Department (DPD) that on the evening of July 2, 2022, DPD members attended a motor vehicle collision involving off-duty VPD member Constable Samuel Cheung (Member) who was identified as the driver of a vehicle that rear-ended an occupied van. The Member complied with an Approved Screening Device demand and provided a breath sample that resulted in a "fail." Additionally, while at the scene, the Member disclosed to a DPD member that he was employed as a police officer with the VPD.

Prabhu Rajan
Police Complaint Commissioner

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3. At DPD headquarters, the Member was administered a Breath Test Apparatus, or Approved Instrument test, that registered his blood alcohol level over the legal limit. The Member was subsequently issued a Notice of 24-hour Prohibition and an Administrative Driving Prohibition and was released on an Undertaking to Appear in Criminal Court.
4. On July 18, 2022, after reviewing the information forwarded by the VPD, the former Police Complaint Commissioner (Commissioner) 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 and one count of *Corrupt Practice* pursuant to section 77(3)(c)(iii) of the Act, for the Member identifying himself as a VPD member during this incident.
5. Due to the ongoing criminal investigation involving Constable Cheung, the *Police Act* matter was suspended. On April 18, 2023, the suspension of the *Police Act* proceedings was lifted as Constable Cheung pled guilty to a *Motor Vehicle Act* offence.
6. The VPD Police Professional Standards investigator, Sergeant Tyler Dodds, conducted an investigation into this matter.
7. On October 19, 2023, the Investigator submitted the Final Investigation Report to the Discipline Authority.
8. On November 2, 2023, pursuant to section 112 of the Act, Acting Inspector Jen Daniel as the initial Discipline Authority, identified that the following allegation 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 with the Member's blood alcohol level over the legal limit.
9. The initial Discipline Authority found the allegation of *Corrupt Practice*, as outlined in the July 18, 2022, *Order for Investigation* with respect to the Member identifying himself as a VPD police officer, was not substantiated.
10. On November 21, 2023, a Prehearing Conference was convened before Acting Inspector Daniel pertaining to Allegation #1, *Discreditable Conduct*. The allegation of *Corrupt Practice* that was not substantiated was concluded by this office.
11. On December 14, 2023, the former Commissioner rejected the Prehearing Conference agreement. Accordingly, the matter proceeded to a Discipline Proceeding before Superintendent Trevor Burmachuk as the new Discipline Authority.

Discipline Proceeding and Proposed Discipline

12. On February 28, 2024, following the Discipline Proceeding, the Discipline Authority made the following determination in relation to the allegation:

- (i) That on July 2, 2022, the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* when off duty, operating a motor vehicle with his blood alcohol level over the legal limit.

Finding: Substantiated

Proposed Disciplinary Measure – 5-day suspension without pay

13. The Member was provided a copy of Superintendent Burmachuk's findings in relation to the allegation of misconduct and determination 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 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 leaving his home and driving in a significant state of impairment. The Member caused a motor vehicle accident with an occupied vehicle containing multiple persons, including children, for which the Member pled guilty to a *Motor Vehicle Act* offence.

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18. Furthermore, based on the evidentiary record, the Member “tossed” a can of beer that was inside of his vehicle into bushes on the side of the road at the accident scene. Also, DPD members investigating the accident located a beer can underneath the Member’s vehicle.
19. It appears that the Discipline Authority did not accord sufficient weight to the aggravating factors in proposing the disciplinary or corrective measures which includes the Member leaving the safety of his home to go for a drive while intoxicated; the danger posed to the public in driving in an intoxicated state; the danger caused to the occupants of the vehicle he struck, which included children; the damage done to the affected person’s vehicle; and attempting to hide evidence of his drinking.
20. Based on the seriousness of this incident, the discipline proposed does not appear adequate given the seriousness of the Member’s conduct and may be seen to bring the administration of police discipline into disrepute.

Public Hearing is not required

21. There has been a thorough and complete investigation, and the available material evidence is sufficient that a Review on the Record is appropriate in the circumstances.
22. In my view, the adjudicator is well placed to independently weigh the issues based on the available evidence.
23. 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

24. In determining that a Review on the Record is necessary in the public interest, I have considered the following factors:
 - (i) The nature and seriousness of the alleged misconduct. Impaired driving continues to be one of the leading causes of death in society. The attention given to address this issue by the courts and Canadian laws demonstrate the seriousness of such conduct. Additionally, attempting to conceal this conduct by discarding evidence 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, and the disciplinary process.
25. A Review on the Record is required in the public interest to ensure that the alleged misconduct is reviewed in its totality considering the seriousness of the allegation of *Discreditable Conduct*.

26. Accordingly, pursuant to section 141 of the Act, I am arranging a Review on 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.
27. Pursuant to section 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.
28. 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 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:

29. A Review on the Record is arranged pursuant to section 138(1) and 141 of the *Police Act*.
30. Within 10 business days after making a determining under section 138, the Commissioner must provide notification of this decision to, among others, the member or former member and the discipline authority involved. The Commissioner must also appoint a retired judge to act as an adjudicator for the purposes of the Review on the Record.
31. On April 25, 2024, the Associate Chief Justice of the Supreme Court of British Columbia recommended one or more retired judges for appointment for the purposes of section 141 of the Act.
32. Also on April 25, 2024, Bill 17 – 2024: *Police Amendment Act* received Royal Assent which immediately brought into force amendments relating to the appointment of retired judges under Part 11 of the *Police Act*. Section 177.2(1) of the Act requires the Commissioner to maintain a list of retired judges who may be appointed under sections 117(1), 135(2), or 142(1). The Commissioner must, from time to time, request the Associate Chief Justice to consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and to recommend retired judges who the Police Complaint Commissioner may include on that list.

33. Following the enactment of Bill 17, the Associate Chief Justice retracted her recommendation to ensure compliance with the Act's new provisions. On May 6, 2024, the Associate Chief Justice provided a list of recommended retired judges for the Commissioner's consideration.
34. The Commissioner is currently in the process of compiling the list of retired judges and creating the necessary procedures for the newly introduced appointment process. A retired judge will be appointed from the list maintained under section 177.2(1) and consistent with procedures developed pursuant to section 177.2(3) in due course. The Review on the Record will occur on the earliest practicable date in accordance with section 142(3).

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

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DATED at the City of Victoria, in the Province of British Columbia, this 10th day of May 2024.



Prabhu Rajan
Police Complaint Commissioner