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IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

In the matter of the Public Hearing into the Conduct of Sergeant Keiron McConnell of the Vancouver Police Department

MEMBER'S SUBMISSIONS ON DISCIPLINARY OR CORRECTIVE MEASURES

A. Introduction

1. Sgt. Keiron McConnell of the Vancouver Police Department ("VPD") admits to five counts of *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, which is, when on or off duty, conducting himself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department.

2. The discreditable conduct consists of inappropriate communications of a flirtatious and/or sexual nature with two VPD constables, and three former adult students at a post-secondary institute where Sgt. McConnell taught. The communications were primarily made over various messaging platforms, including text, Facebook Messenger, and WhatsApp. The communications took place between the years of 2015 and 2018. The admitted facts that constitute the misconduct are contained in an agreed statement of fact ("ASF"), tendered by Public Hearing counsel ("PHC"), and its appendices.

3. Section 126 of the *Act* governs the disciplinary or corrective measures process. It sets out the available measures and the factors to be considered by an adjudicator. The guiding principle governing the imposition of disciplinary or corrective measures is found in s. 126(3) of the *Act*, which provides:

> If the discipline authority considers that one or more 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.

4. This provision was introduced to the municipal police discipline process following the report prepared by the Hon. Wally Oppal in his former capacity as Commissioner in the *Commission of Inquiry into Policing in British Columbia*, which contained the following commentary (Vol. 2, I-48 to I-50):

> **Emphasizing Remedial Discipline**
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> Common sense and experience suggest that punitive discipline is largely ineffective in correcting undesirable behavior and promoting socially acceptable conduct. The traditional discipline system, which calls for progressively more severe punishments for each subsequent violation, is based on the premise that an employee will get progressively better by being treated progressively worse. On the other hand, affirmative approaches attempt to treat discipline as an opportunity to educate the employee, rather than drive the employee to conformity.
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> Historically, police management and discipline in Canada has been quasi-military, with heavy emphasis on a criminal-law approach to police misconduct. For example, the BC Regulation uses the word "punishment" in describing the sanctions that can be imposed when "a disciplinary charge is proved". Formal disciplinary procedures akin to criminal procedures create the impression that disciplinary proceedings are intended to be quasi-criminal rather than remedial. The Inquiry believes that, in keeping with current management strategies, the primary objective of the discipline procedure ought to be remedial rather than punitive, and that this should be reflected in the appropriate legislation.

5. Mr. Oppal's recommendation #291 included these proposed amendments to the former *Code of Professional Conduct Regulation*, reflected in the current s. 126(2) and (3):

> 291(b) both aggravating and mitigating circumstances must be taken into account in determining a just sanction; and
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> (c) where disciplinary action is necessary, an approach that seeks to correct and educate a police officer should precede one that seeks to blame and impose punishment;

B. Joint Submission and Applicability of *Anthony-Cook*

6. PHC, counsel for the Police Complaint Commissioner, and counsel for Sgt. McConnell agree that Sgt. McConnell's conduct requires a combination of disciplinary and corrective measures, the latter in part to achieve deterrence of other police officers and maintenance of public confidence. Counsel have agreed upon the appropriate disciplinary and corrective measures that should apply to the misconduct and present a joint submission and agreed statement of facts to the Adjudicator. A detailed breakdown of the parties' joint submission on measures is

contained in a separate document. Briefly, it consists of the following global measures pursuant to s. 126(1) of the *Act*:

- a reduction in rank from sergeant to first class constable for a minimum of 12 months, with no ability to supervise other officers;
- a return to the rank of sergeant at some point after one year, at the VPD's discretion;
- an inability to apply for promotion from sergeant to staff sergeant for a period of three years;
- a 20-day suspension of pay; and
- training, counselling, close supervision, and offers of apology.

7. All counsel submit that this joint submission is not contrary to the public interest and will not bring the administration of police discipline into disrepute. They say further that, when presented with a joint submission, there circumstances in which an adjudicator may refuse to accept the proposed resolution are narrow and exceptional.

8. In *R. v. Anthony-Cook*, 2016 SCC 43 at para. 25, the Supreme Court of Canada recognized that joint submissions on sanctions are not only an accepted and desirable practice, but are also "vitally important to the well-being of our criminal justice system as well as our justice system at large" [emphasis added]. Following that decision, courts have routinely recognized the value of settlement discussions as well as the strong policy reasons that favour the promotion of certainty to the parties when settlement is reached.

9. The SCC declared that the test a judge must apply when considering a joint submission in a particular case is the "public interest" test. The question is whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest (at para. 32). In the assessment of joint submissions, "contrary to the public interest" is a high threshold, only applying when the submission is (at para. 34):

> … 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, to believe that the proper functioning of the justice system had broken down.

10. The SCC and appellate courts have considered the high standard for the application of the public interest test for joint submissions, and how the sentencing judge's assessment differs from traditional sentencing methodology:

    a. In *R. v. Nahanee*, 2022 SCC 37 at para. 37, the SCC noted that it would be in the "rarest of cases that a judge applying the public interest test deviates from

the specific sentence proposed" in joint submissions, contrasting those with contested sentencing hearings following a guilty plea.

b. In *R. v. C.R.H.*, 2021 BCCA 183, our Court of Appeal regarded the public interest test endorsed in *Anthony-Cook* as the most stringent of the various tests considered (at paras. 73-82). It concluded that the sentencing judge had focussed only on the period of incarceration and failed to give sufficient weight to significant post-incarceration terms that imposed continued state supervision of the offender (at paras. 89-91).

c. In *R. v. Murtagh*, 2024 BCCA 390 at paras. 33-42, the Court described the "different methodology" that a sentencing judge must bring to a joint submission, rather than the traditional or conventional sentencing approach. The judge is not precluded from assessing fitness, but must demonstrate a full appreciation of the basis and justification for the joint proposal.

11. Administrative tribunals considering sanctions in professional discipline have routinely adopted the "public interest" test from *Anthony-Cook* when considering joint proposals, recognizing that the same policy considerations apply (namely, the value of settlement discussions in the process; the importance of certainty in outcome; the benefits of efficiency to the justice system generally; and the benefit to victims, complainants, and witnesses in particular cases of not having to testify).

12. The following are some reported examples of administrative tribunals applying this test in police and other professional discipline matters:

a. There has been no public hearing adjudication in BC in which counsel presented a joint submission to an adjudicator. There have been, to counsels' collective knowledge, two reviews on the record ("ROR") in which the adjudicator was presented with a joint submission. In the first, Adj. Arnold-Bailey accepted a joint submission on appropriate disciplinary or corrective measures. In detailed reasons, she concluded that joint submissions benefit all parties as well as the public in the *Police Act* context, and do not undermine the application of the s. 126 factors and provisions. She saw the public interest test set out in s. 126(3) as congruent with the *Anthony-Cook* public interest test.

b. In the second, Adj. Frankel rejected a joint submission on appropriate disciplinary or corrective measures. Effectively he substituted his own determination of a fit sentence. He emphasized that the ROR is statutorily limited to a correctness review. It therefore may be difficult for a ROR adjudicator to apply the *Anthony-Cook* approach when the disciplinary or corrective measures are the only basis on which the PCC ordered the review.

c. *RCMP v. Cst. Flodell*, 2023 CAD 05 at paras. 57-63; and *RCMP v. Cst. Pietrzak*, 2023 CAD 11 at paras. 30-33.

d. *Law Society of BC v. Palmer*, 2024 LSBC 2 at paras. 42-46, accepting a set of four factors akin to those set out in s. 126(2) of the *Police Act.*

e. *College of Physicians and Surgeons of Ontario v. Duic*, 2025 ONPSDT 11 at para. 9 (ER doctor).

f. *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at paras. 10-14 (teacher).

13. Sgt. McConnell submits that the test the adjudicator must apply in this case is the "public interest" test, as articulated in *Anthony-Cook* and subsequently applied.

C. Sgt. McConnell's Background

14. Sgt. McConnell is 56 years old. He joined the VPD Reserves in 1988 and became a regular member in 1990. He is the most senior sergeant in the VPD, having been promoted to that rank in 2004. He worked for many years in gang-related sections of the VPD and CFSEU, and participated in a number of high-profile murder investigations.

15. His last assignment was to Patrol in District 3 in 2018. He has been suspended as a result of this process since 2022, latterly without pay since July 2024.

16. Unusually, Sgt. McConnell has an MA in Criminology and a PhD from London Metropolitan University. His thesis was written on "The construction of gangs in British Columbia." He has taught criminology and justice-related courses almost two decades at various post-secondary institutions. He has been able to undertake this academic and teaching work by juggling his shift schedules.

17. He suffers from post-traumatic stress disorder, which developed after his attendance at many gruesome crime scenes. He began seeing a psychologist in 2021, before these allegations arose. His psychologist has stressed the importance of continuing his treatment with her.

D. Submissions

18. The parties advance a joint submission on disciplinary or corrective measures, and agree that the adjudicator should assess the joint submission differently from a conventional contested sanctions hearing. The analysis must commence not with a preliminary determination of appropriate measures, but rather with the basis for the

parties' joint submission, including the important benefits that it affords to the administration of justice.

19. Sgt. McConnell submits that the joint submission clearly meets the public interest test and will not bring the administration of police discipline into disrepute. Sgt. McConnell has made significant admissions to misconduct, dispensing with the need for proof. This matter comprised historic allegations from multiple female witnesses, with the attendant problems of spotty real evidence and contested recollections. Sgt. McConnell's admissions have permitted final and definite resolution to this matter, and avoided the need for a lengthy contested hearing, with the attendant risk of potential revictimization of the persons affected by his misconduct. These are important benefits to the administration of justice.

20. Sgt. McConnell reiterates that the adjudicator's task is not to determine fit measures and then measure the joint submission against them. Rather, the adjudicator may consider the s. 126(2) factors to assure herself that the measures are sound, accord with the statutory scheme, and will not bring the administration of police discipline into disrepute.

S. 126(2)(a): Seriousness of the misconduct

21. Sgt. McConnell's submissions are not intended to suggest that the misconduct is not serious. It certainly is. However, the misconduct does need to be placed in context. Although there are five different women involved, he has supervised and worked with hundreds of female police officers in his career, and taught hundreds of students. His performance reviews regularly demonstrate that he is a well-liked and respected supervisor who has sound professional and personal relationships with his colleagues.

22. Member 2 is clear that Sgt. McConnell's messages stopped once she joined the same section as him, albeit on a different team.

23. All three students were adult females in their mid-twenties. While they are labeled as "students" in this process, Students 1 and 2 were former students at the time of the misconduct. Further, at the time of the misconduct against the students, none of the post-secondary institutions had any policies prohibiting or discouraging personal relationships with students or former students.

24. Sgt. McConnell accepts that he was ignorant of the dynamics at play, and was unaware of the very real and clearly negative internal response of the women to his comments. The reality is that none of the women, except Member 1, directly or explicitly told him that his comments bothered them. The remainder often politely laughed it off, or at times participated. To be clear, Sgt. McConnell understands the women had absolutely no obligation to address his conduct directly, or to make formal or informal complaints. Sgt. McConnell did not set out intending to cause

harm, and did not believe he was doing so at the time. He was frankly oblivious to the effect of his rank and stature on women who were not reporting to him directly or supervised by him academically.

S. 126(2)(b): Record of Employment

25. Sgt. McConnell has no discipline on his service record. His performance appraisals demonstrate that he has for many years exceeded the expectations of a VPD sergeant and made a valuable contribution to the public safety in Vancouver and the Lower Mainland generally (Attachment 1).

S. 126(2)(c): Impact of the Sanction on the Member and Family

26. Demotion is the most serious sanction available, short of dismissal. Its effects are not limited to the significant financial impact affecting the remainder of the member's career. In a hierarchical organization, it involves a reduction in rank. Sgt. McConnell has worked very hard both for and during his tenure as sergeant. Being stripped of his rank after two decades comes with significant financial, reputational, professional, and personal costs. Further, counsel for Sgt. McConnell says that the deterrent effect on colleagues of a former sergeant showing up to work in a constable's uniform, performing non-supervisory policing duties, with a loss of face and reputation, will be significant. There will be no "out of sight, out of mind" effect here.

S. 126(2)(d), (e): Acceptance of Responsibility, Recidivism

27. Sgt. McConnell has admitted the misconduct, negating the need for a contested hearing and for the witnesses and complainants to testify. He has been deeply affected in reviewing the statements of the women, and is coming to terms with the impact that his conduct had on them. He is deeply remorseful, and wishes to apologize to each of them individually, if they wish to receive such an apology.

28. Sgt. McConnell has been actively engaged in therapy since 2021, prior to these allegations coming to light. He meets with his psychologist on a regular basis to deal with both his PTSD from workplace trauma and with his misconduct. They have worked and will continue to work on issues such as impulsivity and self-awareness. His psychologist notes "significant notable behavioural changes" and she believes he will continue to grow and learn (Attachment 2).

29. The misconduct occurred during the period in which Sgt. McConnell's marriage had broken down. He was going through a particularly difficult time in his personal life and was attempting to start dating again.

30. The risk of future misconduct is exceptionally low. The proposed measures include ongoing monitoring, education, training, close supervision, and counselling. The

impact of this discipline process on Sgt. McConnell and his family has been momentous. The negative effects of the process to date, combined with the positive effects of the corrective measures, will ensure that the exceptionally low risk of reoccurrence remains that way.

S. 126(2)(f): Contribution of municipal department's policies

31. While the VPD have a Respectful Workplace Policy embedded in their general manual, they did not provide training on sexual harassment. Their policies do not restrict relationships between officers who are not in a direct reporting relationship, but simply require reporting of relationships so that the Department can consider whether one of the parties should be moved.

S. 126(2)(g): Range of disciplinary or corrective measures taken in similar circumstances

32. There remains a significant lacuna in the jurisprudence concerning police discipline in this province. Of the cases that are available, it is not surprising that there is no exact fit for the circumstances here. The newly-minted OPCC Discipline Digest contains such abridged versions of the facts that it is difficult to tell with like conduct attracts like sanctions. There are a range of responses to inappropriate and unwanted actions and/or communications that are flirtatious or sexual in nature.

33. In *De Haas*, the adjudicator would have imposed a 30-day suspension on a senior member who patted a graduating recruit on the bottom and sent an inappropriate message to her afterwards. In *Keleher*, a Victoria sergeant had, off duty, sexually assaulted a woman by inserting his fingers into her vagina, and putting her hand on his penis after a drunken night out in Vancouver. The adjudicator rejected Public Hearing counsel's submissions that he should be dismissed and imposed a 30-day suspension. In *RR 24-01*, the adjudicator dismissed a New Westminster sergeant after findings of serial predatory behaviour, including what was classified as a "serious sexual assault". There is no suggestion of any such assault in this case.

34. Simply put, there is no indication that this case falls outside an appropriate range.

D. Conclusion

35. In sum, and borrowing from the language of the SCC, at the stage of a joint submission including an agreed statement of facts when there has been no evidentiary phase, all that is required is a consideration of whether the joint submission fails the "public interest" test in that it is so "egregious" or "unhinged" that it would undermine public confidence in the system. In the statutory language, the

assessment required is whether the joint submission would bring the administration of police discipline into disrepute. The joint submission presented here is detailed, responsive to the circumstances of the case, responsive to the member's admissions, and appropriately balances disciplinary with corrective measures.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: April 14, 2025

Anila Srivastava and Cait Fleck
counsel for Sgt. Keiron McConnell