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2023-25107

IN THE MATTER OF THE PUBLIC HEARING INTO THE CONDUCT OF SERGEANT KEIRON MCCONNELL OF THE VANCOUVER POLICE DEPARTMENT IN ACCORDANCE WITH THE POLICE ACT, RSBC 1996, C. 367 AS AMENDED

Public Hearing Counsel	Marilyn Sandford, KC, and Katrina Purcell
Commission Counsel	Brian Smith
Counsel for the Member	Anila Srivastava and Cait Fleck
Public Hearing Dates	April 9 and May 6, 2025
Date of Decision	May 6, 2025

DECISION ON CORRECTIVE & DISCIPLINARY MEASURES
PURSUANT TO SECTION 126 AND
RECOMMENDATIONS PURSUANT TO SECTION 143(9)(c)

Pursuant to Section 150 of the *Police Act*, there is a ban on publication of the names of the seven individuals described in the Notice of Public Hearing in this matter and on the publication of any information that would tend to identify them. The ban includes restrictions on access to and publication of some materials filed on the hearing. The full terms of the publication ban are posted on the Office of the Police Complaint Commissioner website.

1. Overview

[1] Sergeant Keiron McConnell of the Vancouver Police Department [“the Member”] faced a public hearing into allegations of discreditable conduct in the nature of sexual

harassment of seven individuals who were either work colleagues or students of his. On the first day of the hearing, the Member admitted five of the allegations and Counsel tendered a joint submission on disposition.

[2] For reasons of privacy, the Notice of Public Hearing[1] issued on June 19, 2024 referred to the seven individuals as Members A, B and C, and Students A, B, C and D. The allegations to which the Member admitted are those pertaining to Members B and C, and Students A, C and D.

[3] Public Hearing Counsel, Counsel for the Commissioner, and Counsel for the Member have tendered an agreed statement of facts and a set of proposed terms of resolution suggesting corrective and disciplinary measures, and recommendations. In these materials, the individuals formerly identified as Members B and C and Students A, C and D are referred to as Members 1 and 2, and Students 1, 2 and 3.

[4] Two of the individuals, formerly Member A and Student D, elected to become complainants under the *Act* and were provided with the opportunity to make submissions on the public hearing pursuant to Section 143(7). Member A has done so and I am advised that Student D (now Student 3) declined. In addition, all Counsel agreed that it was appropriate for me to receive statements from Members 1 and 2, though they were not listed as complainants. After some discussion regarding the appropriate mechanism for bringing in their statements, it was agreed that they should be admitted pursuant to Sections 143(5) and/or (6). These three individuals' submissions are subject to the ban on publication and will not be posted on the website. I will refer to them further a bit later in these reasons.

[5] In light of the joint submission, I am called upon to consider whether the proposed disciplinary and corrective measures and the suggested recommendations

[1] https://opcc.bc.ca/wp-content/uploads/2024/06/21398-2024-06-19-Notice-of-Public-Hearing.pdf

are appropriate. For the reasons that follow I have decided that they are, with some slight modifications, as I will explain.

2. Admitted Allegations and Facts

[6] The five allegations to which the Member admits are set out in paragraphs 25 b), d), e), f) and g) of the Notice of Public Hearing. Each consists of Discreditable Conduct pursuant to Section 77(3)(h) of the *Police Act*, which is defined as "conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department." The allegations are characterized in the Notice of Public Hearing as "sexual harassment".

[7] I will here summarize the facts as they pertain to each of the five individuals toward whom the Member admits misconduct. These facts come from the Notice of Public Hearing, and from the Agreed Statement of Facts, including excerpts from electronic messages which were filed as Appendices to it. The Agreed Statement of Facts is posted on the OPCC website, but the Appendices are not reproduced there for privacy reasons, in order to safeguard any identifying details.

Some of the content of the electronic messages that is included in this decision may be subject to the Section 150 ban on publication and any such content will be redacted from this decision before it is posted to the OPCC website.

(a) Member 1

[8] With respect to Members 1 and 2, the Notice of Public Hearing states that during an investigation arising from the complaint of Member A, the OPCC received information that the Member had allegedly been sexually inappropriate with two female subordinate officers.

[9] The Notice of Public Hearing states that Member 1 alleged that the Member made sexualized comments about her in person and through text messages between

2015 and 2018, and that he also made sexualized comments about other female officers.

[10] The Agreed Statement of Facts states that Member 1 joined Team 2 of the Gang Crime Unit [GCU] at the Vancouver Police Department while the Member was the leader of Team 1 at that unit. In April 2017, Member 1 was transferred to Team 1, where the Member would have become her supervisor. During Member 1's time in the GCU, the Member sent her unsolicited and unwelcome electronic messages of a sexual nature, which made her feel degraded and caused her anxiety. She was concerned about raising the issue with the Member because of his position; however, she eventually confronted him about it and he apologized. Member 1 was satisfied that the matter had been dealt with informally at that point.

[11] The texts relating to Member 1 reflect that the Member sent her messages on one evening in which he referred to her as "hot," to which she responded that she respected him and knew he would never be disrespectful. He responded, "Oh I would be!!!!!... But our secret. If I can't be then I don't want to offend," and then, "What are you wearing". Member 1 responded, "A potato sack". The Member said he was "looking for more details" and then, "Ok I don't want you to be uncomfortable around me. I am sorry. I had a crush. I have acted foolish." He then apologized and asked, "Is it gonna be weird now".

[12] Member 1 responded with a denial, and the Member said, "I'm sorry I crossed the line. I think you['re] hot and acted like an idiot… It was a thong though…Cmon."

[13] The materials contain a second exchange on another platform, pertaining primarily to work-related matters, in which the Member stated, "You don't hang out with … unless you like dick," Member 1 responded with a question mark, and the Member said "[Name deleted] big dick …And a dickhead." He went on to ask her home address in case she was needed "on [a] project."

(b) Member 2

[14] The Notice of Public Hearing states that between 2017 and 2019, the Member made repeated sexualized and inappropriate comments to Member 2 via social media direct message, often at night when she was off duty, and that they included fantasies about her engaging in sexual acts with him at his desk. Member 2 indicated that she did not confront him about these comments as he was in a senior position, and she worried that if she said anything there would be negative career implications.

[15] The Agreed Statement of Facts indicates that Member 2 was assigned to a mentorship with the Member's GCU team in 2017, and later became a member of Team 2, and that the Member sent her electronic messages containing sexual content, including sexual remarks about her underwear, her sexual preferences, and his sexual fantasies.

[16] The texts contained in the materials pertaining to Member 2 include the following, apparently dated in April of 2019. The Member states, "I stopped flirting with you because I knew you were coming to the unit," and asks, "So we … good," to which Member 2 responds "Yes." The Member goes on, "And you are not mad I used to flirt," Member 2 responds, "Nope," the Member states, "I feel weird around you sometimes because of it… I liked it before… And now I have to be good." Member 2 replies, "There comes a time in all of our lives when we have to be good! It would be weird if we didn't have to." The Member replies, "Ok. Clear message."

[17] In an exchange that appears to be dated June 2019, the Member asks Member 2 if she declined overtime because she did not want to work with him and she denies that. He says, "I'm just glad not because of me hitting on you." In another exchange dated December 2019, which appears to be shortly after midnight, the Member asks Member 2 whether she had fun on a recent trip, to which she says, "I did." The Member goes on, "Best part. And don't say a fireman. Break my heart." Member 2 responds, "I'm never about the firemen". The Member says, "Old bald guys?" Member 2 states, "Ha ha, just

no firemen!" and the Member responds, "I'm old and bald". Member 2 deflects with travel remarks, and the Member states, "And I'm not a fireman". Member 2 responds that it is bedtime for her.

[18] The Member returns to this conversation, it appears just after 1:00 p.m. the same day, stating, "Any fireman pics" and Member 2 responds, "Just murals". The Member says, "So you really didn't get lucky", and Member 2 responds, "I was with my daughter… And I'm not into firemen". The Member asks, "Who you into" and Member 2 responds, "No one at the moment", to which the Member says, "Vow of celibacy".

(c) Student 1

[19] Sergeant McConnell's conduct with Student 1 is described in the Notice of Public Hearing as follows:

> In November 2016, the Member invited her and fellow students out for drinks. While at the establishment, [Student 1] became increasingly uncomfortable with Sergeant McConnell's behaviour towards her. She decided to leave by taxi. [She] alleged that the Member unexpectedly and without invitation boarded the taxi she was occupying. [Student 1] further alleged that when she attempted to exit the taxi upon arriving at her destination, the Member prevented her from exiting the taxi and attempted to kiss her. She departed the taxi on her own and ran to her friend's house.

[20] The Agreed Statement of Facts sets out that Student 1 attended two classes taught by the Member at a BC university in late 2015 or early 2016. The following autumn he invited some former students to an event at a pub. Student 1 attended the event, which was on the US election date, November 8, 2016. Student 1 was 25 at the time. The Member and Student 1 stayed longer after the group left to watch television coverage of the election. At one point when either Student 1 or the Member was in the washroom, Student 1 received text messages from the Member in which he asked what colour underwear she was wearing, and suggested different colours. When they both left the pub, Student 1 flagged a taxi, they both got in, and when they reached Student 1's destination, the Member leaned over and tried to kiss her, which she deflected, and

left the taxi. The Member contacted Student 1 to apologize the next day. She did not respond and did not report the incident at that time because she feared for her career prospects, but later reported it, with Student 2, in 2017, to the university administration.

(d) Student 2

[21] The Notice of Public Hearing states that Student 2 received a series of Facebook messages from the Member which included euphemisms for sexual terms. She reported that, as she aspired to become a police officer, she was concerned that the Member may speak negatively about her to recruiting personnel if she did not respond to his messages. Student 2 ultimately changed her mind about becoming a police officer, which she attributed to her experience with the Member.

[22] The Agreed Statement of Facts specifies that Student 2 took a course from the Member, it appears at the same BC university as Student 1, and when she was no longer a student of his, he sent her a series of unsolicited, unwanted Facebook messages. She responded that they made her uncomfortable, but he continued and sent further messages including sexual content and innuendo. This occurred in February 2017, when Student 2 was 23.

[23] Student 2 aspired to be a police officer and was concerned about negative repercussions of not responding to the Member, and did not report the interaction due to concerns about her career, until she later reported it with Student 1.

The following summary in paragraphs 24 and 25 of the content of the messages received by Student 2 is subject to the Section 150 ban on publication in this matter and will be redacted from this decision before it is posted on the OPCC website.

[24] [redacted]

[redacted]

[25] [redacted]

(e) Student 3

[26] The Notice of Public Hearing states that the Member sent Student 3 sexually inappropriate messages in 2017 and 2018 while she was his student at a BC University. The messages concerned and upset her because the Member was well connected in the policing environment, and she did not want to offend him and jeopardize her academic status or a future career as a police officer. She also reported that the Member sent her a sexually inappropriate message after she had graduated from the university that she interpreted as him seeking a sexual act from her.

[27] The Agreed Statement of Facts states that the Member was Student 3's honours supervisor. During that time, they exchanged social media messages and engaged in video conversations, and the Member sent unsolicited and unwelcome texts commenting on her physical attractiveness. She was in her mid-20's at the time.

Student 3 aspired to be a police officer and this experience with the Member was one factor in her decision not to pursue that career.

The following summary in paragraph 28 of the content of the messages received by Student 3 is subject to a ban on publication and will be redacted from this decision before it is posted on the OPCC website.

[28] [redacted]

[29] The impact of the Member's misconduct on these five individuals will be discussed further in Part 5(a) dealing with the seriousness of the misconduct.

3. Proposed Terms of Resolution

[30] Counsel filed a joint document setting out the disposition they proposed. The document is posted on the OPCC website and a summary will suffice here. It contains 13 terms which the Member has agreed to accept as consequences for his misconduct, and one additional term pertaining to recommendations to the VPD, which I will deal with separately.

[31] The proposed terms to which the Member has agreed include demotion to First Class Constable; a 20-day suspension; assignment to duties away from Members 1 and 2 and to duties that are consistent with the VPD's obligation to provide a safe and healthy workplace; and a minimum A12-month suspension from supervisory duties during which the Member will attend a minimum of 6 counseling sessions, attend the VPD respectful workplace training, work under close supervision and participate in

restorative justice sessions with the seven affected individuals at their option and/or offer apologies. Reinstatement to the rank of sergeant and supervisory duties will thereafter be at the discretion of the VPD, the Member may not apply for promotion to Staff Sergeant for three years, and will repeat the respectful workplace training each year for the following two years.

4. Legal Framework

[32] The issue of sanctions in this matter is framed within a joint submission made by distinguished Counsel who represent not only the Member, but the Office of the Police Complaint Commissioner and the public. Each has lent their discernment to the appropriate resolution of the matter, in consideration of the nuances of the evidence, the exigencies of proof of misconduct, the impact on the witnesses of requiring them to testify, any weaknesses in the evidence, and the nature of the misconduct, viewed in context. There is authority in both the criminal sphere and that of police discipline establishing that considered resolutions advanced by experienced counsel are entitled to deference unless they are shown to be contrary to the public interest.[2]

[33] Section 126(2) of the *Police Act* sets out the statutory aggravating and mitigating factors that are to be considered in deciding on corrective or disciplinary measures following a finding of misconduct. These will be considered in Part 5 below, but I accept Counsel's submission that those factors are to be considered as a yardstick against which to measure the effect of the proposed disposition on the public interest.

[34] This principle comes from the cases of *Anthony-Cook* and *Nahanee*, which are both Supreme Court of Canada cases, and therefore authority from the highest court in the land. They establish that a joint submission must be given effect unless it would be viewed by reasonable and informed persons as a "breakdown of the proper functioning of the justice system". This authority has been accepted to one extent or another in

[2] *R v. Anthony-Cook,* 2016 SCC 43; *R. v. Nahanee* 2022 SCC 37; and Constable Rajbir Thaper Review on the Record, RR 23-02

various legal contexts including discipline tribunals, and in proceedings under the BC *Police Act*, on a recent Review on the Record in relation to Constable Thaper[3].

[35] In that matter, Adjudicator Arnold-Bailey accepted the principles of *Anthony-Cook* and *Nahanee* and proposed the following test for the purpose of *Police Act* proceedings:

> 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.[4]

[36] I am advised that in another OPCC Review on the Record pertaining to disciplinary and corrective measures, *Cheung*[5], Adjudicator Frankel expressed doubt about whether the *Anthony-Cook* and *Nahanee* principles applied in that context. I note that in relation to a review on the record, the question, at least as it pertains to appropriate measures[6], may be narrower than what I am being asked to do here, and with due respect to both of my colleagues, I expect that the application of the *Anthony-Cook* principles to a review on the record may need to be revisited at some point.

[37] Setting that aside, it appears only reasonable to me to apply the principles of *Anthony-Cook* and *Nahanee*, as adapted to *Police Act* matters by Adjudicator Arnold-Bailey in *Thaper*, to the issue of a joint submission on a public hearing.

[38] In his reasons in *Anthony-Cook*, Justice Moldaver articulated the test for rejection of a joint submission as follows:

> … 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

[3] RR 23-02, supra
[4] Supra, at para. 58
[5] Constable Samuel Cheung Review on the Record RR 24-02
[6] Constable Tyler McCluskie, Review on the Record, RR 19-01, para. 48.

> proper functioning of the justice system had broken down. This is an undeniably high threshold…[7]

[39] In considering whether to accept the joint submission, I instruct myself accordingly, substituting the language in *Thaper*, which tailors the test to the BC police discipline context.

[40] As I have indicated, my view is that the assessment of whether the proposed resolution is contrary to the public interest entails a review of the Section 126(2) aggravating and mitigating factors as well as the Section 126(3) requirement that proposed measures be workable and align with the need to maintain respect for the administration of police discipline. Counsel have provided thorough and helpful submissions in relation to these factors, and I turn to those now.

5. Section 126(2) Factors

(a) Seriousness of the Misconduct

[41] Sergeant McConnell's conduct is readily characterized as sexual harassment, and he has admitted as much. In each case, he was in a position of authority or mentorship in relation to the recipient of his attentions.

[42] As put by Counsel for the Commissioner in his submissions:

> 58. While only one of the five admitted allegations involves an in person attempt at unwanted physical contact (the attempted kiss of Student 1), all five involve unwanted sexualized comments made in the context of relationships characterized by substantial power imbalances. To borrow language from a prior adjudication, the admitted misconduct has "a clear complexion of grooming" and suggests Sergeant McConnell was "either oblivious to social boundaries, or contemptuous of them."[8]

[7] 2016 SCC 43 at para. 34
[8] Review on the Record, OPCC No. RR 24-01 ("RR 24-01")

> 59. Also significant is that Sergeant McConnell's admissions do not relate to one or even two instances of poor judgment but rather reveal what appears to have been a pattern of inappropriate behaviour with multiple women.

[43] The misconduct consists primarily of electronic messages described as "unsolicited and unwanted" with one instance of attempted physical contact. I agree that it is clear the Member had issues respecting or recognizing reasonable boundaries. In addition, his behaviour capitalized on his superior position, which afforded him access to these younger individuals for whom, with respect, he might not otherwise reasonably be considered age appropriate, or eligible. While the misconduct must in that respect be considered predatory, it is toward the low end of the scale in terms of that particular characterization. It may be contrasted with the misconduct that occurred in the prior case referred to by Commission Counsel, RR 24-01, which involved repeated physical interactions, and more significant and obvious vulnerability.

[44] In relation to the Member's understanding of his actions at the time he was engaged in the conduct, his Counsel states:

> 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.

[45] I note that the content of some of the messages demonstrates that the Member was alive to the need for "secrecy" in relation to some of his communications, and that he was aware he had "crossed the line," was "inappropriate" and "offensive." If he tried to avoid direct supervisory situations, he was clearly not successful in avoiding power imbalances and was nonetheless aware of the impropriety of many of his interactions.

[46] It must be borne in mind however that the earliest of these interactions dates back to perhaps ten years ago, and the most recent appears to have been in late 2019. The circumstances have a “me too” character to them, in that publicization of some of the allegations, at least in relevant circles, appears to have led to an increased number of historical complaints. This phenomenon highlights the secrecy that often surrounds this kind of conduct, arising from embarrassment and fear of reprisal, which can often only be alleviated by a public airing of grievances by authorities, convincing others to come forward.

[47] By the same token, the dated nature of the incidents invites consideration of the Member’s recognition and any intervening positive steps, discussed below. As highlighted by the submissions in relation to departmental policies, the law in relation to workplace sexual harassment has evolved considerably over the decade since the Member’s behaviour first occurred. Societal recognition of the phenomenon of workplace sexual harassment in policing has been unfortunately slow to occur, and policies are still evolving. The incidents at issue here must be viewed in context, as events that occurred between 2015 and 2019, against the backdrop of that evolving legal landscape, and not solely from the perspective of a public as informed as it is now on the topic.

[48] The impact of the misconduct on the individuals is also one aspect of its seriousness. During the investigation, Members 1 and 2 both expressed having felt anxiety and degradation, and all five individuals reported varying degrees of fear that if they resisted the Member’s entreaties or reported his behaviour, they would suffer career-related consequences. It appears that the experience contributed to different career choices for two of the students.

[49] Three of the affected individuals have submitted statements pertaining to the impact on them of the Member’s misconduct. It is in my view significant, and relevant to the assessment of the effect on the public interest, that none of them takes issue with the appropriateness of the proposed measures.

[50] I note that the misconduct to which the Member has now admitted does not include his interactions with Member A. As a complainant, she was entitled to make a submission under Section 143(7) and she did so, not only commenting on the impact on her of the misconduct, but also of the investigation process. Her comments about process will be referred to in Part 8 below.

[51] In my view her eloquent submission dramatically captures the impact that these kinds of situations can have on affected persons. Member A's submission is subject to the Section 150 ban on publication ban and I here reproduce a portion of it which has been vetted in compliance with the terms of the ban. I have paraphrased liberally out of concern for her privacy, hopefully without doing damage to the deep sentiment, which I believe is appropriate to include here. She says:

> …There has been harm, to students, to police officers …it was suggested …that police officers are less impacted than students, that they are more resilient. The damage to each person will vary … a police officer [is] not hurt only by [such] conduct but by being entrenched in an organization where such harm could take place. There is the potential to silence women, particularly policewomen, for years to come. There has been no real acknowledgment of the number of lives he impacted in a negative way, girls he scared, [intimidated], turned off policing, students who likely left their university experience with lifelong scars that no one should have to carry. Instead, there was blaming, his past traumas, his personal mental health, that the Vancouver Police Department did not teach him how not to sexually harass women, that the victims should ask for an apology. When does a victim have to make a request for an apology? Who is handed the power in that scenario?
>
> I don't seek an apology. What broke you cannot heal you. I know the pain I've experienced, the consequences, an apology can't fix that. [Many female officers] have experienced significant trauma during [their careers], … been at gangland slayings… have been present… at the worst day of many people's lives, … witnessed suffering … experienced trauma that spilled over into [their lives], affected [their] wellness.
>
> …Nothing, absolutely nothing in my career has had the long-term negative impact on my mental health, physical wellbeing, sense of community, trust in the Vancouver Police Department, friendships and overall wellness than the

> experience of this police allegation and subsequent investigation, nothing. It has altered my past, my present and my future.

[52] Member 1 in her statement also eloquently articulates the effects of both the Member's actions on her, and of being required to make a statement in connection with the investigation. As noted, she had considered the matter dealt with when she confronted the Member, but when another person named her in the investigation process, she was required to make a statement. She describes how the cumulative effects of both the experience and the process have detrimentally affected her confidence and her work performance.

[53] Much of Member 1's statement is personal and further detail might tend to identify her, but the following general sentiment, reproduced in compliance with the publication ban, illustrates the impact of her experience:

> We need more accountability for supervisors within the police force. One in a role of authority over subordinates must provide a safe, professional and secure environment as it sets the tone in the respective units. We face an extremely difficult job and are exposed to things most people couldn't even imagine, because of this we shouldn't fear negative treatment from our coworkers or supervisors.
>
> … This is a chance for women involved to trail blaze the way for others. For women and men to know there is a reason we must speak up and stay strong. There is purpose to not hiding in the shadows when you are treated so poorly and when there is a power imbalance. VPD promotes being a place that employs more policewomen than anywhere else yet there is an overall feeling that women aren't entirely safe or protected when coming forward.

[54] Member 1 expressed feelings of isolation in connection with the events and the investigation. Member 1 also provided thoughtful recommendations for changes that might facilitate the complaint process for persons experiencing harassment, which I will refer to in Part 8 below.

[55] Member 2 in her submission states that the sexual communication from the Member was unwanted, violating, and caused her extreme anxiety about encountering

him in a work setting, resulting in her contemplating a different career choice. Similarly to the other individuals, she did not report it for fear of reprisal and the repercussions of a formal investigation, and just hoped he would stop. Her fear and anxiety affected her sleep, and similarly to Member 1, she felt isolated and was unaware there were other victims. She expressed a feeling of guilt for not having spoken up sooner and spared others the experience and the threat of having to testify at a public hearing.

[56] I here reproduce a portion of Member 2's statement, vetted in compliance with the ban on publication. She states:

> Using my voice, to stand up for myself and the other women, outweighs any fear that I might have for my own career aspirations and the repercussions I might face by doing so. No women, whether a professional or as a member of the public, should ever have to choose between their career aspirations and standing up for themselves and doing what is right. This type of sexualized behaviour is wrong and completely unacceptable, especially by anyone who is in a trusted position of power. My hope is that women find the courage to speak up against inappropriate and unwanted sexual behaviour such as this…

(b) The Member's Conduct History

[57] The Member is 56 years old. He became a Vancouver Police Department Reserve Constable in 1988, and a regular member in 1990. He attained the rank of sergeant in 2004. In 2009 he joined the Gang Crime Unit, where he led a team from 2012 to 2019. In 2019, he was assigned to Patrol, where he remained until he was suspended, in 2024, as a result of these allegations. He is the most senior sergeant at the VPD, and he has no prior entry of misconduct on his record.

[58] The Member 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 for almost two decades at various post-secondary institutions. He has accomplished this academic and teaching work by juggling his shift schedules. As do many first responders, he suffers from post-traumatic

stress disorder, after attendance at many gruesome crime scenes. He began seeing a psychologist in 2021, before these allegations arose.

[59] The Member's Counsel makes the point that the Member 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. Indeed, some of the affected persons in their statements spoke of his high stature in the department.

[60] I must observe however that it is not to the Member's credit that he has spent the last 10 years without a finding of misconduct. As noted by one of the affected individuals, had the conduct come to light earlier, it might have ended earlier, and others may have been spared. It is the nature of this kind of misconduct that it goes unreported for much longer than it should, and this case, highlighted by the Member's admonishments of secrecy, is illustrative of that.

[61] I nonetheless accept that there is the absence of the aggravating factor of any prior recorded misconduct, and an otherwise impressive work record.

(c) The Impact of the Proposed Measures

[62] Public Hearing Counsel submits that the following significant impacts of the proposed measures on the member and his career support the joint resolution:

> 19. …Firstly, the reduction in rank from Sergeant to First Class Constable is substantial in terms of the authority the Member will have within the VPD. Further, he will not be assigned any supervisory responsibilities or act in any supervisory capacity for, at a minimum, the first 12 months at his new rank. He will also be suspended without pay for 20 days. These disciplinary measures will have a considerable career impact and financial impact on Sergeant McConnell.
>
> 20. Further, the proposed corrective measures will have a positive impact on Sergeant McConnell as the resolution contemplates continued counselling, additional workplace training, and, potentially, apologies. Thus, the terms of the proposed resolution will effectively require that Sergeant McConnell reflect upon

his misconduct and take steps to better understand where he went wrong and why this behaviour was inappropriate and discreditable.

[63] I would add that the public nature of these proceedings, and the visible nature of the proposed measures within the department, will likely have a significant educative and deterrent effect on other VPD members, as well as members of other police departments, as to the expected standards of conduct in relation to subordinates, and the likely consequences of breaching them.

(d) Whether the Member Accepts Responsibility and the Likelihood of Future Misconduct

[64] It is my habit to consider these factors together in light of the degree of overlap between them. They encompass the member's insight into the wrongdoing as well as his degree of contrition.

[65] With respect to each of the five allegations to which the Member has admitted, he stipulates that he accepts that he was either in a position of authority, or the affected individual considered him an authority figure. He accepts that his communications, and in one case, actions, were unsolicited, unwanted, inappropriate, and discreditable. In accepting the characterization of "discreditable", the Member admits that he knew or ought to have known that his conduct would likely bring discredit on the police department.

[66] In this case, therefore, the Member's acceptance of responsibility is demonstrated by his admission to the five allegations. It may be contrasted with the situation where a member is just accepting his fate after having an adverse finding made against him. The Member has taken overt steps to resolve the matter and spare the need for evidence to be called, which demonstrates not only insight into the degree of harm and the inappropriateness of his actions, but recognition of the stress to the witnesses of being required to testify publicly. The Member has expressed his willingness to make amends by offering apologies, but by making those optional, he recognizes the possibility of revictimization that might arise if they were mandated.

[67] Commission Counsel, in his submissions, makes this point:

> 67. Sergeant McConnell did not admit his misconduct until after the Commissioner called the public hearing into the allegations of misconduct against him. This undercuts his acceptance of responsibility to some degree, as his admission did not come early enough to avoid some of the system costs associated with preparations for a public hearing, or to spare the seven women the stress and discomfort of having that process looming over their heads for many months. However, even a delayed admission is very significant as compared to the alternative of a contested adjudication.

[68] In response, Counsel for the Member points out that there were “spotty real evidence and contested recollections” and that the Member’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.” She adds, “These are important benefits to the administration of justice.”

[69] In my view, the Member’s acceptance of responsibility in this matter, while it could have come earlier, is a significant mitigating factor, not just because it removes the necessity for the witnesses to testify, but because it spares the system the resources that would have been dedicated to this lengthy matter, which was set for the better part of four weeks. The Member’s admission of misconduct not only shortens the proceedings, but assures the result in relation to the five allegations, and provides, or proposes, certainty for all parties in relation to outcomes.

[70] In terms of the likelihood of future misconduct, I note firstly that the timeframe within which these incidents occurred coincided with the breakdown of the Member’s marriage, which may have been a contributing factor. In addition, some of the measures that are proposed here, notably the counseling, which the Member voluntarily undertook well before it will be mandated by this disposition, and his acceptance of the proposed workplace monitoring, will go a long way towards providing guidelines and safeguards against any recurring inappropriate behaviour on his part. In addition, his demotion and

the restrictions on his supervisory capacity will ensure that he will not be permitted to resume a position of authority until it is deemed safe, by his employers, for him to do so.

[71] One function of the measures imposed in matters of this nature is to ensure that the penalty is significant enough that the member is personally deterred from ever again engaging in the same kind of misconduct. The penalty of demotion is second only to dismissal, and in fact it affords the additional opportunity of having the Member return to the workplace in a demonstrable way, having accepted and now being required to live out his fate. In some respects that may be harder than seeking other pursuits. The proposed measures also include a significant suspension, the third most stringent measure that is available under the *Act*. The maximum suspension is 30 days, and the Member here accepts that a 20-day suspension is appropriate. It must be borne in mind that will be on top of any unpaid leave that he has completed up to now.

[72] Acceptance of those penalties by way of a joint proposal, and of the many additional terms that will be imposed here, go a long way toward providing assurance that the Member understands the gravity of the misconduct and will not repeat it. Given that the measures are just short of dismissal, the Member may be assured that a recurrence of similar behaviour will most certainly mean the end of his job.

[73] I will say that, even without the recent law pertaining to joint submissions, the mitigating factor of an admission of misconduct here, similarly to a guilty plea, goes a long way in support of the proposition that something just below the maximum penalty is appropriate; in respect of a first entry of misconduct on the officer's record; in a case where there may have been difficulties with evidence potentially affecting the outcome and continued anguish to those affected, had they been called upon to testify.

(e) Departmental Policies and Procedures

[74] It appears to be common ground among Counsel that, as stated by Public Hearing Counsel, "the absence of a stand-alone sexual harassment policy at the Vancouver Police Department may possibly have contributed to a lack of awareness on

the part of Sergeant McConnell in regards to what constitutes appropriate workplace behaviour." His Counsel makes the additional point that only one of the individuals told him his communications were unwelcome, and states:

> 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.

[75] I have recognized that the law in the area has been evolving; however, there are two reasons I am a bit reluctant to accept that much blame may lie with the department here. The first is the Member's demonstrated knowledge, in many of the messages, that he was crossing a line and may be causing offence. In addition, the messages demonstrate a number of instances where he recognized, but failed to respect, obvious rejection or deflection by the recipient, and persisted in his entreaties.

[76] The other issue I have with this submission is that whatever may be said about the department's policies, in my view the concept of sexual harassment ought to have been on the Member's radar well before the end of the period of misconduct. Setting aside the issue of a stand-alone harassment policy, the Member had taken courses in respectful workplaces, including one focused on supervisors and managers. His acknowledgement of wrongdoing within the messages, his training, and the social climate, including the widespread "me too" movement, in my view attenuate any suggestion that the absence of a dedicated policy on the part of the department contributed to oblivion on the part of the Member.

[77] Taken with his failure to accept that his actions were unwanted when that was clearly conveyed to him, it appears rather that the Member was sadly and inexplicably disdainful of workplace and mentorship boundaries. These are boundaries that I should have thought would be starkly evident to him, as a manager and mentor, well before these incidents came to light.

[78] Nonetheless, I accept that the departmental policies relating to relationships, and the absence of a policy dedicated to the issue of sexual harassment in the workplace, at the relevant times, may have underlain the Member's failure to be as circumspect as he might otherwise have been. In some respects, such as his ceasing to "flirt" when one individual came into his unit, it appears that he may have been intentionally sidestepping what he understood to be the written policies.

[79] It is not suggested in any event that the absence of policy negates misconduct here, which is admitted. It is rather one of the factors to be considered in assessing the context of the misconduct, and what recommendations might flow from it.

(f) The Range of Penalties in Similar Cases

[80] Commission Counsel has performed a helpful survey and summary of cases dealing with sexual harassment under the *Police Act*, and suggests the following conclusion:

> The Proposed Resolution would be at the high end of the range revealed by the Digest. A reasonable and informed person, mindful of the benefits of joint submissions, would not see the Proposed Resolution here as being unhinged from past discipline cases or otherwise contrary to the public interest.

[81] Counsel for the Member submits that, "Simply put, there is no indication that this case falls outside an appropriate range."

[82] I have already observed that the measures that the Member will accept here are just short of the most serious available sanctions. In my view the most comparable recent case is that of RR 24-01, previously mentioned, in which dismissal was imposed. That case was more serious, involving "serious sexual assault" as pointed out by Member's Counsel. In addition, it is not irrelevant that the member in that case resigned before the decision, and declined to make submissions as to the appropriate measures. In two other public hearing matters, *De Haas*, and *Keleher*, adjudicators declined to

dismiss for sexual transgressions, both involving physical contact to one degree or another.

[83] I agree that in comparison with such other similar cases as may be found, the proposed disposition in this matter should not appear “unhinged” from the applicable body of law.

6. Section 126(3)

[84] Section 126(3) mandates that an adjudicator prioritize measures that emphasize correction and education unless they are deemed unworkable or would bring the administration of police discipline into disrepute. Member’s Counsel has provided some helpful background to the enactment of that section and philosophy behind it, including the rejection of a dated premise “that an employee will get progressively better by being treated progressively worse.”

[85] The measures set out in Section 126(1) are essentially listed in order of severity, with the more punitive options of dismissal or reduction in rank, at the top, being reserved for more serious types of conduct, where lesser measures would run afoul of Section 126(3). There is therefore something of a progressive analysis, but with an emphasis on correction and education over punishment. The foregoing consideration of the Section 126(2) factors assists in establishing that the proposed disposition will not bring the administration of police discipline into disrepute, which to my mind is a very similar analysis to that recommended in *Thaper*.

[86] The remaining question under Section 126(3) is workability. In his submission, Commission Counsel states as follows:

> 90 The Commissioner acknowledges that s. 126(3) calls for an assessment of workability. Among other things, this requires consideration of whether a department will be able to [successfully] implement the Proposed Resolution and safely reintegrate Sergeant McConnell into the workplace without causing harm to female co-workers. In a recent review on the record[9] involving misconduct allegations linked

[9] RR 24-01

> to sexual harassment, the Chief of relatively small department gave affidavit evidence about the unworkability of a return, saying it would not be possible to assign duties that would avoid bringing the subject member into contact with employees who had been the focus of his actions. In that case, the Chief's evidence contributed to a finding of dismissal. [Reference added.]
>
> 91 In this case, the VPD did not seek participant status or seek to provide evidence about the workability of any disciplinary or corrective measures that might be considered. *It should therefore be inferred that the VPD is ready and prepared to implement whatever measures the Adjudicator may order.* The VPD is the largest municipal department and should be able to assign Sergeant McConnell duties consistent with the Proposed Resolution and the VPD's obligation to provide all its members and employees with a safe environment free from discrimination and harassment. [Emphasis added.]

[87] The concept of workability can be problematic for an adjudicator without expertise in the sphere of policing administration.[10] In addition to the case referred to by Commission Counsel, evidence from a department was admitted in another review on the record, in favour of a return to work with some similar supervisory terms to those proposed here.[11] There were no workplace safety issues in that case, as there are here.

[88] In considering whether I can infer workability from the absence of a response or application to intervene by the VPD in this matter, I observe, firstly, that in RR 24-01, as reflected in the Notice of Review on the Record[12], the Chief Constable registered a timely objection to the decision of a discipline authority that the Chief considered unworkable. In this matter, the Proposed Terms of Resolution and Counsel's submissions have been publicly available since shortly after the last appearance on April 9, 2025, and there has been no application on behalf of the VPD to make submissions or challenge the proposal. I note that there was time for an intervening application by Members 1 and 2 to provide submissions. While that application was

[10] Constable Tyler McCluskie, Review on the Record, OPCC No. RR 19-01, para.50.
[11] Corporal McLaughlin, Review on the Record, OPCC No. RR 16-03.
[12] https://opcc.bc.ca/wp-content/uploads/2024/01/16234-2024-01-22-Notice-of-Review-on-the-Record-1.pdf

subsequently withdrawn and dealt with by consent under Sections 143(5) and (6), it demonstrates that there was time and an opportunity, had the VPD seen fit to intervene.

[89] Secondly, in this matter, I note that several experienced Counsel, each with input from their clients, have fashioned the proposed terms based on their wisdom and instructions. None of them, nor the individuals who have made statements, two of whom are employed by the VPD, have expressed concerns about whether the terms can be implemented.

[90] I confess that I nonetheless have some lingering concerns about the VPD's ability to safeguard its workplace, particularly in light of the experience of the affected individuals in how the internal investigation was handled. Those issues are beyond the scope of this public hearing, however, and will need to be left in the hands of the VPD for consideration. In the absence of an assertion on the department's part that the proposed terms are not workable, despite what I consider having been an adequate opportunity for them to raise the issue, I have no basis for concluding other than that they are workable.

7. Conclusion as to Measures

[91] I have modified the 13 proposed terms I intend to impose under Section 126(2) to take into account the factors I have considered in the public hearing and conveyed above. As noted, Term No. 10 in the submitted Resolution document pertained to recommendations, and I will deal separately with those under the next heading. The terms have been renumbered accordingly. I will note that in light of the joint submission, I have consulted with Counsel regarding the modifications I will make to these and the Recommendations.

[92] The terms I impose now are therefore as follows:

1. The Member's rank is reduced to First Class Constable. The date on which this demotion is effective will be left to VPD administration to work out in a timely fashion, in consideration of the Member's work status, his suspension

under Term 9 and the application of Section 110 to the Member's status. I understand that the Member's Section 110 suspension will end with this ruling.

2. The Member will not be assigned to any duties or shifts that would require working directly with Member A, Member 1 or Member 2 (as identified in the Agreed Statement of Facts). All reasonable steps will be taken to limit contact between them. However, in urgent or operationally necessary situations, such as officer safety incidents or emergency calls, some incidental interaction may be unavoidable.
3. The Member will be assigned duties or schedules that are consistent with the VPD's obligation to provide a safe and healthy workplace for all employees.
4. During the first 12 months working at the new rank, the Member will:
    a) not be assigned any supervisory responsibilities or act in any supervisory capacity;
    b) attend a minimum of six psychological counselling sessions with his current psychologist or another qualified mental health professional to discuss, among other things:
        i. his workplace interactions with women, whether at VPD or otherwise; and
        ii. appropriate text and social media communications, cues, and boundaries;
    c) attend VPD training on its respectful workplace policy; and
    d) work under close supervision, which will entail the following:
        i. The Member's supervisor will be given the agreed statement of facts and admissions from the public hearing and the Adjudicator's ruling.
        ii. The supervisor will monitor the Member's compliance with the order, including the continuation of his psychological counselling, his attendance at workplace training, and his overall reintegration into the workplace.
        iii. The supervisor will meet with the Member bi-weekly to review his progress and will make and keep notes of those meetings.

iv. The supervisor will provide monthly reports to VPD HR regarding the Member's compliance with the order and overall progress reintegrating into the workplace.

5. At the end of the 12-month period described in clause 4 (above), VPD shall assess the situation and may assign the Member the rank of sergeant if satisfied he meets the required qualifications and is fit to assume the associated responsibilities. If VPD in its sole discretion decides not to assign the Member the rank of sergeant at the 12-month mark, it will assess the Member again after a further six months, and every six months after that as needed.
6. If the Member continues at the rank of First Class Constable after the expiry of the 12-month period described in clause 4 (above), VPD may at its sole discretion continue to require that the Member not be assigned supervisory responsibilities or act in a supervisory capacity and/or that he work under close supervision.
7. The Member will not apply for promotion to Staff Sergeant until at least three years have passed since the date of this ruling.
8. The Member will repeat the VPD's respectful workplace policy training in the second and third years after the date of this ruling, and, in each such year, to the extent that it is available, will attend any stand-alone training on sexual harassment that has been implemented by the VPD pursuant to this ruling.
9. The Member will be suspended without pay for 20 days, which suspension will occur before the 12-month period described in clause 4 (above) commences.
10. During the 12-month period described in clause 4 (above), the Member will meet with any of the seven individuals identified in the Notice of Public Hearing who wish to meet with him in person, by telephone, or virtually to hear them out and apologize. He understands that they may not wish to. If any of the seven individuals do wish to have such a meeting, they may request it during the 12-month period through their own counsel (if any) or through the OPCC.
11. The Member may decide to offer written apologies to the seven individuals either at his own instigation or that of VPD. Any such written apologies would be sent first to the OPCC, which would then reach out to the intended recipient(s) or their counsel (if any) to determine if they wish to receive them.

12. For clarity, the Member is not ordered to apologize, and none of the seven individuals are obliged to receive any form of apology from the Member unless they consent to receive it.
13. If requested by the OPCC at any time during the three years following this ruling, VPD will provide written confirmation to the OPCC and, as available, the Adjudicator, verifying whether there has been compliance by the Member with any or all of the above-noted measures.

8. Conclusion as to Recommendations

[93] Term No. 10 of the Proposed Terms states:

> Commission Counsel will ask the Adjudicator to recommend that VPD and the Vancouver Police Board work with qualified experts to create and deliver standalone mandatory training on sexual harassment to all members and civilians employed by the Vancouver Police Board.

[94] In his submissions, Commission Counsel elaborates on this request, as follows:

> 80. … Ideally the training would be live and in-person with practical scenarios and examples, rather than an on-line exercise that participants can click through without meaningful engagement and participation.
> …
> 82. If they have not already done so, the VPD and the Board should work with qualified experts to develop and implement mandatory standalone training focused on the eradication of sexual harassment and associated workplace conflicts. Any such training should stress that those who violate sexual harassment policies or take reprisal actions against persons reporting harassment or participating in harassment investigations may face discipline up to and including dismissal. Providing such training is an important preventive measure. It would help to educate members and employees about their rights and responsibilities in these areas. It would also send a strong signal that the VPD and the Board are committed to providing safe and healthy workplaces free from sexual harassment.

[95] The authority to make recommendations at a public hearing derives from Section 143(9), which states the adjudicator "must … recommend to a chief constable or the board of the municipal police department concerned any changes in policy or practice that the adjudicator considers advisable in respect of the matter."

[96] While this appears to be something of a carte blanche authority, and mandatory at that, in practicality, such recommendations are generally done with input from counsel and in some cases, from the relevant police department.[13] Counsel in this matter have joined in submitting that the specified recommendation be made.

[97] In relation to the issue of departmental practice, I accept the suggestion that the VPD could benefit from development of a stand-alone sexual harassment training program, and I must express some surprise that Counsel collectively view the current Respectful Workplace program as inadequate. As mentioned already, my view is that the issue of sexual harassment has been at the forefront for some years now, and many, many organizations have implemented not only training programs but policies on procedure for dealing with incidences of sexual harassment. I would hope that the VPD process has evolved from that described by the members, but if it has not, it must.

[98] My view is that it is not just a stand-alone training program that is required, but a dedicated workplace policy dealing specifically with sexual harassment, and how disclosures of incidents that might constitute sexual harassment should be processed by Professional Standards, or externally, so that those who report them are not themselves either victimized or re-victimized by coming forward.

[99] It is not within my authority or expertise to specify the terms of such a process, but I would hazard a guess that the field of assessing workplace sexual harassment policies and designing processes to safeguard workers from it is occupied by qualified services or consultants with sufficient expertise, as suggested by Counsel's reference to "qualified experts" in the development of sexual harassment training programs.

[100] Failing the availability of qualified experts, those tasked with the design of this new sexual harassment policy for the VPD might benefit from an online survey of sites that set out applicable standards and policies, such as the Human Resources and Skills

[13] Constable Batiuk, Review on the Record, OPCC No. 15-02

Development Canada, Information on Labour Standards, Part 12 Sexual Harassment;[14] or the BC Provincial site, "Address sexual harassment,"[15] the BC Human Rights Clinic,[16] and the Ontario Human Rights Commission.[17]

[101] Another source of constructive suggestions would be for the VPD or Board to conduct "exit" interviews with the affected persons and complainants in this matter to collect their suggestions as to how the process might be redesigned. They have each provided some comments on how the system might be improved, and how they were affected by how the investigation unfolded, which should in my view be thoughtfully considered by those tasked with policy development in the department.

[102] Again, it is beyond my purview to comment on the extent to which investigations of this type, under the *Police Act*, should be conducted internally or externally, or what parts of the process in particular caused grief to the witnesses, but these are inquiries that should be made in connection with the review of the training program *and* of the departmental policies that pertain to complaints of sexual harassment. Obviously, any process that is designed will need to dovetail with Part 11 of the *Police Act* in relation to complaints that disclose misconduct. As with the training program, given the removal of this process from the day to day exigencies of police administration at the VPD, any recommendation I make will need to encompass any steps that may already have been taken.

[103] Accordingly, pursuant to Section 143(9) of the *Police Act*, I recommend as follows:

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[14] http://canada.ca/content/dam/canada/employment-social-development/migration/documents/assets/portfolio/docs/en/reports/labour_standards/sexual_harassment/harassment.pdf

[15] https://www2.gov.bc.ca/gov/content/careers-myhr/all-employees/working-with-others/address-a-respectful-workplace-issue/address-sexual-harassment

[16] https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/human-rights/human-rights-protection/sex-discrimination-harassment.pdf

[17] https://www3.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment/8-preventing-and-responding-sexual-harassment#:~:text=Suggested%20contents%20of%20an%20anti,sexual%20and%20gender%2Dbased%20harassment.

(a) If not already done, the VPD and/or the Vancouver Police Board, as the case may be, retain and work with qualified experts to create and deliver stand-alone mandatory training on sexual harassment to all members and civilians employed by the Vancouver Police Board, focused on the eradication of sexual harassment and associated workplace conflicts. Any such training should stress that those who violate sexual harassment policies or take reprisal actions against persons reporting harassment or participating in harassment investigations may face discipline up to and including dismissal;

(b) If not already done, the VPD and/or Vancouver Police Board, as the case may be, retain and work with qualified experts to conduct a review of its sexual harassment policy, with a view to ensuring it is receptive, encouraging and respectful of complainants and other persons reporting suspected sexual harassment, and that such persons are appropriately protected from any harm or negative consequences arising within the department from the making of a complaint or reporting of suspected sexual harassment;

(c) In conducting the review described in paragraph (b) above, the VPD and/or Board, or the persons tasked with the review, consider the submissions provided by the three VPD members (A, 1 and 2) in this matter, and/or consult with any of those individuals who agree to consult with them. For the purposes of this recommendation, it will be at the sole discretion of the member who provided the submission to make it available to the reviewers.

(d) The VPD report to the OPCC, and as available, the Adjudicator, within 3 years of the date of this ruling on any changes to its sexual harassment training and policy on sexual harassment that have been made after the investigation in this matter and/or arising from this ruling.

[104] Findings of misconduct will be recorded in relation to the five allegations to which the Member has admitted. The remaining two allegations, those pertaining to Member A and Student B, are dismissed.

Dated at Vancouver, British Columbia this 6th day of May, 2025.

Carol Baird Ellan, K.C.
Retired Provincial Court Judge
Adjudicator