

December 5, 2023

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

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT
AGAINST CONSTABLE [REDACTED] OF THE
SURREY POLICE SERVICE

DECISION PURSUANT TO SECTION 117 OF THE *POLICE ACT*
AND NOTIFICATION OF NEXT STEPS

TO: [REDACTED] and [REDACTED]

AND TO: Constable [REDACTED]
c/o Surrey Police Service
Professional Standards Section

AND TO: Clayton Pecknold
Police Complaint Commissioner

AND TO: Sergeant [REDACTED]
c/o Surrey Police Service
Professional Standards Section

Introduction

[1] This is a review of an internal departmental decision that a police officer did not engage in "misconduct", as that term is defined in s. 77 of the *Police Act*, R.S.B.C. 1996, c. 367 [PA]. That decision dealt with a complaint made by [REDACTED] ("Mr. [REDACTED]") and [REDACTED] ("Ms. [REDACTED]") with respect to the conduct of four members of the Surrey Police Service ("SPS") during a traffic stop.

[2] Constable [REDACTED] ("Cst. [REDACTED]") and Recruit/ Constable [REDACTED] ("R/Cst. [REDACTED]") were the officers who stopped a vehicle drive by Mr. [REDACTED] Ms. [REDACTED] the registered owner, was in the front passenger seat. Constable [REDACTED]

("Cst. [REDACTED]) and Constable [REDACTED] ("Cst. [REDACTED]) were among the officers who arrived later. The complaints alleged misconduct by all four officers.

[3] Mr. [REDACTED] and Ms. [REDACTED] alleged excessive force was used in arresting them, their vehicle was unlawfully searched, money and jewelry were removed or stolen from their vehicle, and inappropriate and unacceptable language, including a racial slur, was used.

[4] Sergeant [REDACTED] "Sgt. [REDACTED] of the SPS investigated the complaint and submitted a Final Investigation Report ("FIR") to Inspector [REDACTED] ("Insp. [REDACTED]). Acting as a "Discipline Authority" under s. 112 of the PA, Insp. [REDACTED] determined none of the officers had engaged in misconduct.

[5] After being advised of Insp. [REDACTED] decision, Mr. [REDACTED] and Ms. [REDACTED] asked the Police Complaint Commissioner, Clayton Pecknold, to appoint a retired judge—as provided for by s. 117(1) of the PA—to act as an Adjudicator and review the matter. On November 14, 2023, Mr. Pecknold appointed me to conduct that review. As I will explain, this review is concerned only with Cst. [REDACTED] conduct.

[6] I have determined that the evidence appears sufficient to substantiate the allegation that Cst. [REDACTED] misconducted himself by acting with "discourtesy" in dealing with Ms. [REDACTED]. The next steps in the discipline process are set out below.

What is to be Determined on This Review

[7] A review under s. 117(1) is an examination of the record provided by the Commissioner to the Adjudicator. It takes place without live witnesses or additional evidence or submissions. It is not an appeal from the Discipline Authority's decision and that decision is not provided to the Adjudicator. What the Adjudicator receives is the FIR which, by virtue of s. 98(5) of the PA must include the following:

- (a) a brief account of the investigative steps taken;
- (b) a complete summary of the relevant evidence;
- (c) a list of all witnesses interviewed by the investigating officer;

- (d) a list of all records related to the investigation;
- (e) the investigating officer's assessment of the evidence and analysis of the fact.

In addition, an Adjudicator receives all the evidence and records referred to in the FIR: s. 98(6). In this case, that includes an audio/video recording made by a device known as a Watchguard, which was mounted on a police vehicle that arrived at the scene after Mr. [REDACTED] and Ms. [REDACTED] had been arrested.

[8] An Adjudicator conducting a s. 117(1) review does not finally resolve factual disputes. Rather, an Adjudicator's task is to determine whether "the evidence referenced in the [FIR] appears sufficient to substantiate the allegation and require disciplinary or corrective measures": s. 117(8)(d)(i). The two possible outcomes of a review are set out in subsections (9) and (10):

(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120(16) [prehearing conference] applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

[9] Recently, in OPCC File No. 2022-22748 (July 19, 2023), Adjudicator Baird Eilan said this in regard to the fact that a determination that the evidence "appear to substantiate the allegation" is merely preliminary finding:

[56] The threshold is lower than proof of misconduct, which is required at a discipline proceeding. Because Section 117(9) designates the Section 117 reviewer as the discipline authority for the purposes of a discipline proceeding, at the Section 117 stage the reviewer must be careful not draw premature conclusions that misconduct has been proven: *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970 at para. 39.

[57] The review is therefore an assessment of the evidence that falls somewhere between "apparent" misconduct and "proven" misconduct; specifically, whether the evidence "appears sufficient to substantiate" misconduct. While that test may entail some weighing or assessment of

the evidence, in particular where there are conflicts, the analysis should not contain any assumptions that the evidence will be interpreted a certain way at a discipline proceeding, where the discipline authority may have the benefit of evidence or submissions on behalf of the member.

[58] The confusion created by the wording of Section 117(8)(d)(i) has been the subject of judicial comment in the past (*Scott* at para. 39), and I will observe here that while there is no onus on the member, the preliminary conclusion required by the section about the "apparent sufficiency" of the evidence is open to challenge at a discipline proceeding in whatever fashion the member may see fit to challenge it, and the discipline authority, despite being the person who has found the evidence apparently sufficient, must approach the discipline proceeding with an open mind about the outcome.

The Focus of this Review

[10] By virtue of s. 112(5)(b) of the *PA*, Insp. [REDACTED] decision is "final and conclusive, unless the police complaint commissioner appoints a retired judge under s. 117(1)", which reads:

(1) If, on review of a discipline authority's decision under section 112(4) or 116(4) that conduct of a member or former member does not constitute misconduct, the police complaint commissioner considers that there is a reasonable basis to believe that the decision is incorrect, the police complaint commissioner may appoint a retired judge recommended under subsection (4) of this section to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

[11] Section 117(5) lists the persons the Commissioner must notify when an Adjudicator is appointed. That list includes "the member or former member whose conduct is the subject of the review". In this case, Cst. [REDACTED] was the only officer notified. Accordingly, only his conduct is under review.

[12] In his notice in this matter, the Commissioner stated why he considers there to be a reasonable basis for believing Insp. [REDACTED] decision with respect to Cst. [REDACTED] is incorrect.

The evidentiary record appears to support that the respondent members [i.e., Csts. █████ and █████] were engaged in the lawful execution of their duties pertaining to the traffic stop. The evidence suggests that the driver did not produce his driver's licence as directed by the member and required by law. Furthermore, the evidence does not support that the force used on the complainants was unnecessary or unreasonable in the circumstances. The evidence is not clear and cogent with regard to the respondent members calling the driver "A fucking Muslim".

However, based on a review of all available evidence, I have a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to the determination that comments made by [Cst. █████] towards [Ms. █████] were not misconduct.

In my view, the evidence supports a conclusion that the comments are either *Discourtesy* or an *Abuse of Authority* and were not due to the circumstances and therefore requires further review. The evidentiary record is fulsome and contains audio/video of the exchange.

Therefore, pursuant to section 117(4) of the *Police Act* and based on a recommendation from the Associate Chief Justice of the Supreme Court of British Columbia, I am appointing David Frankel retired British Columbia Appeal Court Judge, to review this matter and arrive at his own decision based on the evidence.

The Alleged Misconduct

[1] Section 77 of the *PA* contains a comprehensive definition of "misconduct". As the present matter is concerned Cst. █████ verbal interactions with Ms. █████ I consider the following provisions of s. 77(3) relevant:

- (a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,
 - (iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;
- ...
- (g) "discourtesy", which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of the duties of the member.

The Facts

[13] The critical facts are not in dispute as the verbal interactions between Cst. [REDACTED] and Ms. [REDACTED] were, for the most part, recorded by the Watchguard. Leaving aside the few snippets of conversation that cannot be made out, what was said is known.

[14] On the afternoon of January 27, 2023, Cst. [REDACTED] and R/Cst. [REDACTED] were on patrol, in uniform, in a marked police vehicle. Cst. [REDACTED] who was driving, was acting as R/Cst. [REDACTED] field trainer. They observed a Lexus make an unsafe lane change and cut-off another vehicle. A computer check indicated no principal driver was listed for the Lexus. The officers followed the Lexus a short distance before stopping it and pulling in behind it.

[15] R/Cst. [REDACTED] took the lead. He approached the driver's side of the Lexus; Mr. [REDACTED] was the driver, Ms. [REDACTED] was in the front passenger seat, and there was a young child in the back seat. R/Cst. [REDACTED] advised Mr. [REDACTED] why he had been stopped and asked Mr. [REDACTED] for his driver's licence. Mr. [REDACTED] refused to produce a driver's licence. He became agitated and argumentative. He said he was not required to produce his licence because sometime before a police officer told him he would put a note on the Lexus's file that Mr. [REDACTED] was the principal driver.

[16] Cst. [REDACTED] could see Mr. [REDACTED] had not produced a driver's licence. He went over to the Lexus and spoke to R/Cst. [REDACTED] who advised him what had just occurred. Cst. [REDACTED] told Mr. [REDACTED] he was required to produce his driver's licence. Mr. [REDACTED] responded by saying he did not have to produce his licence because of what another officer had told him. Mr. [REDACTED] repeatedly refused to produce his driver's licence. Cst. [REDACTED] told him several times that if he continued to refuse, then he would be removed from the vehicle and arrested for obstruction of justice. When Mr. [REDACTED] persisted, Cst. [REDACTED] arrested him for obstruction and removed him from the Lexus.

[17] Cst. [REDACTED] and R/Cst. [REDACTED] escorted Mr. [REDACTED] to the front of the police vehicle. All had their backs to the Lexus. Mr. [REDACTED] offered some resistance to Cst. [REDACTED] placing

him in handcuffs. As Cst. [REDACTED] was trying to handcuff Mr. [REDACTED] he noticed Ms. [REDACTED] running towards R/Cst. [REDACTED] with a black object in her hand (later determined to be a cellphone). Cst. [REDACTED] radioed for a "cover" (i.e., backup) unit and told R/Cst. [REDACTED] to deal with Ms. [REDACTED].

[18] R/Cst. [REDACTED] turned, blocked Ms. [REDACTED] and directed her to stand by the sidewalk. Cst. [REDACTED] told R/Cst. [REDACTED] to place Ms. [REDACTED] under arrest. Ms. [REDACTED] offered some resistance to R/Cst. [REDACTED] placing her in handcuffs.

[19] Corporal [REDACTED] ("Cpl. [REDACTED]") of the Royal Canadian Mounted Police, was the first of several officers to arrive at the scene. He parked his vehicle directly behind Cst. [REDACTED] vehicle. Cpl. [REDACTED] vehicle was equipped with a "Watchguard" that captured the view looking through the windshield of his vehicle and the sound picked up by a microphone he was wearing. When Cpl. [REDACTED] arrived, Mr. [REDACTED] was in Cst. [REDACTED] vehicle and Ms. [REDACTED] was standing with Cst. [REDACTED] and R/Cst. [REDACTED] on street on the passenger side of the Lexus. The child was in the Lexus.

[20] While the FIR contains a detailed summary of what is on the Watchguard recording it does not contain a verbatim transcript. What follows is based on my having watched that recording multiple times. I have underlined the words spoken by Cst. [REDACTED] that appear to me to be of concern. I have also indicated in bold where it appears to me that Cst. [REDACTED] raised his voice and spoke in an aggressive tone of voice.

[21] Cpl. [REDACTED] gets out of his vehicle and Cst. [REDACTED] walks towards him. Cpl. [REDACTED] asks Cst. [REDACTED] if he is "good" and advises him that he is recording. Cst. [REDACTED] replies:

All good. Just refusing to give a licence. Asked him multiple times. Gave him an obstruction warning and then we took him out and arrested him. She came out an almost jumped on his back.

Cst. [REDACTED] indicates there is a child in the back of the Lexus.

[22] Cst. [REDACTED] and Cpl. [REDACTED] walk over to where R/Cst. [REDACTED] and Ms. [REDACTED] are standing. Ms. [REDACTED] says "my baby is scared". Cst. [REDACTED] tells her she can sit in

the Lexus. She talks over him as he tries to speak with her. Cst. [REDACTED] tells R/Cst. [REDACTED] to take the keys out of the Lexus. R/Cst. [REDACTED] walks around to the driver's side of the Lexus and then returns to the passenger side.

[23] Because Cst. [REDACTED] and Ms. [REDACTED] are speaking at the same time it is difficult to make out everything they are saying. Several times he tells her he would like to explain something; she keeps talking over him. She asks why her husband has been arrested. The following then occurs:

Cst. [REDACTED] Can I explain something to you?

Ms. [REDACTED] Yes.

Cst. [REDACTED] And stop cutting me off, enough of this shit. Stop cutting me off.

[24] Ms. [REDACTED] leans into the Lexus through an open door to speak to the child, who is crying:

Cst. [REDACTED] Hey, come over here. I'm still talking to you. Come over here, I'm still talking to you, okay. Right now you are in custody. The next time we pull you over and we ask you for a driver's licence, you give it, okay. If you're gonna not going to give your driver's licence ...

Ms. [REDACTED] [interrupting, indiscernible]

Cst. [REDACTED] ... if you're not going to give your driver's licence, then you're going to get arrested for obstruction. Do you understand?

Ms. [REDACTED] [interrupting, indiscernible]

Cst. [REDACTED] Listen. No, no, no, no. You've been talking a lot. Let me talk. Let me explain to you what's happening.

Ms. [REDACTED] Why are you behaving like this?

Cst. [REDACTED] Behaving like this. You almost jumped on his fucking back; are you retarded? [Pointing at R/Cst. [REDACTED] who is back on the passenger side of the Lexus.]

Ms. [REDACTED] No, sir, you're behaving very rudely with us.

Cpl. [REDACTED] Well you need to cooperate when they stop you. They ask you for the licence ...

Ms. [REDACTED] I am cooperating, but I'm asking them why you arrest him?

Cst. [REDACTED] Listen, the problem is ...

Cpl. [REDACTED] Arrest who?

Ms. [REDACTED] My husband.

Cst. [REDACTED] ... you almost jumped on his back.
Cpl. [REDACTED] You stay in your car when we arrest somebody.
Ms. [REDACTED] And my baby very scared and he's keep on crying.
Cst. [REDACTED] Okay, then you calm your baby down. You don't jump on my partner's back.
Ms. [REDACTED] [Indiscernible]
Cst. [REDACTED] **You ran up on him. You ran up on him.**
Ms. [REDACTED] So many people just for ... [Commenting on there now being six officers at the scene].
Cst. [REDACTED] Yeah, just for you two. You guys are creating a show.

[25] Cst. [REDACTED] walks away from the Lexus leaving Ms. [REDACTED] with Cpl. [REDACTED] and R/Cst. [REDACTED]

Cpl. [REDACTED] You just stay in your car. You stay calm.
Ms. [REDACTED] Okay.
Cpl. [REDACTED] Let them do their job.
Ms. [REDACTED] That's good.
Cpl. [REDACTED] That's all we ask for.
R/Cst. [REDACTED] ... just dealing with your husband. Right. ...

At this time, Cst. [REDACTED] opens the back door of his vehicle and removes Ms. [REDACTED] from inside. As a result, those standing by the Lexus are no longer visible on the video.

R/Cst. [REDACTED] ... We told you the reason why he's being arrested, obstruction of justice. If he's not going to give us driver's licence, that's against the law. Right. He needs to ... he needs to give his driver's licence.
Ms. [REDACTED] ... why you ... so many times they pulled us over ...
R/Cst. [REDACTED] I understand. You're being calm.
Ms. [REDACTED] ... but he, but I cannot drive. But he's my principal driver so ...
Cpl. [REDACTED] That has nothing to do with what happened. He has to provide a licence when he is stopped by a police and asked to produce a licence. He has to.
Ms. [REDACTED] He didn't do anything wrong. He didn't do anything wrong.
R/Cst. [REDACTED] The reason why we're speaking to you, when you come behind us like that, that's like a threat to us as a police officer ...

Ms. [REDACTED] Sorry, sir, but I am scared.

R/Cst. [REDACTED] That's why I said you're under arrest and you got aggressive with me. That's why this all happened.

Ms. [REDACTED] Can I sit in my car?

R/Cst. [REDACTED] That's fine. You can ...

Ms. [REDACTED] I can't drive.

R/Cst. [REDACTED] Have a seat in there. Yeah, yeah, yeah. That's fine.

Cpl. [REDACTED] You can sit in your car.

Ms. [REDACTED] So, my hands ... [Referring to being handcuffed].

R/Cst. [REDACTED] Just have a seat.

Cpl. [REDACTED] Just have seat. It's like this for now.

Ms. [REDACTED] [indiscernible]

R/Cst. [REDACTED] You can calm your son down. You can calm. Everything's fine. It is fine, okay.

Ms. [REDACTED] gets into the Lexus to calm her child.

[26] A short time later, Mr. [REDACTED] is placed back into Cst. [REDACTED] vehicle, and Cst. [REDACTED] walks to the driver's side of the Lexus. Someone asks Ms. [REDACTED] to step out of the Lexus; R/Cst. [REDACTED] helps her out on the passenger side. As Cpl. [REDACTED] is standing a few feet away from the Lexus his microphone does not pick up what is being said in the immediate vicinity of the Lexus. When Cpl. [REDACTED] moves closer, the following is recorded:

Cst. [REDACTED] Where's his driver's licence?

Ms. [REDACTED] [indiscernible]

Cst. [REDACTED] No, you're going to tell us. You're not going to fuck me anymore. You nearly jumped on his back.

Ms. [REDACTED] I didn't jump, sir. Don't do that.

Cst. [REDACTED] **You ran up on him. How do I know you weren't going to attack him?**

Ms. [REDACTED] ... I was scared ...

Cst. [REDACTED] **I don't care. You don't do that.**

Ms. [REDACTED] Who are you, his supervisor or manager?

Cst. [REDACTED] **It doesn't matter who I am. I'm asking you where his licence is. Are you going to tell me or no?**

Ms. [REDACTED] His license is at home.

Cst. [REDACTED] Okay, then say that next time.

Ms. [REDACTED] So, sir ...

Cst. [REDACTED] You were wrong again, weren't you?

[Child upset, calling for his mother.]

Ms. [REDACTED] My son is here. Please, I can't leave him.

Cst. [REDACTED] Everyone's going home today, alright.

Ms. [REDACTED] That's our RCMP son. You like them.

Cpl. [REDACTED] What is your husband's name?

Ms. [REDACTED] [...]

Cpl. [REDACTED] Sorry.

Ms. [REDACTED] [...]

Cpl. [REDACTED] What's his last name?

Ms. [REDACTED] [REDACTED]

Cpl. [REDACTED] Okay. That's his car?

Ms. [REDACTED] But the insurance is under my name and he is my principal driver.

Cst. [REDACTED] Oh, see how much easier it is when you start telling us information that we need. Now where everybody's calm, right. Now that you're in handcuffs, now you're giving us information. When we told you all this stuff earlier you didn't want to talk.

Ms. [REDACTED] The reason why, sir, is because so many times they pull out for this reason, that's not good ...

[Indiscernible, people talking over each other.]

Cst. [REDACTED] Here's the thing ...

R/Cst. [REDACTED] Just listen to him.

[Indiscernible, people talking over each other]

Cst. [REDACTED] Just listen to me, okay. The next time we pull you over, you give us what we're asking for. That's it. No one harassing you. I don't even know you. I've never met you in my life.

Ms. [REDACTED] No ...

Cst. [REDACTED] Have I met you before? Have I met you before?

Ms. [REDACTED] What I am try to say, the other officer ...

Cst. [REDACTED] I don't care about the other officer.

Ms. [REDACTED] ... I want to put a note ...

Cst. [REDACTED] Listen to me.

Ms. [REDACTED] ... so that next time...

Cst. [REDACTED] Hey.

Ms. [REDACTED] ... the other officers when they put your licence number ...

Cst. [REDACTED] Listen. I don't care whoever's pulled you over in the past. I don't care. When I pull you over. I've never talked to you before, have I? Have we ever met? Do I know what you've been through before? I don't.

Ms. [REDACTED] No, but it's ...

Cst. [REDACTED] So when you do this kind of stuff it's kind of concerning.

The remainder of the conversation between Cst. [REDACTED] and Ms. [REDACTED] is indiscernible because Cpl. [REDACTED] is speaking with other officers.

[27] Both Mr. [REDACTED] and Ms. [REDACTED] were released at the scene. Mr. [REDACTED] was given tickets for unsafe lane change and failing to produce a driver's licence. He was also ticketed for having open cannabis in his vehicle; a marihuana vape pen was seized from his jacket pocket. Crown counsel was not asked to consider charging Mr. [REDACTED] with obstruction of justice.

Analysis

[28] There is no question that Cst. [REDACTED] used profane and demeaning language in dealing with Ms. [REDACTED]. It also appears that he occasionally spoke to her in an aggressive tone. When interviewed by Sgt. [REDACTED] he attributed his choice of words to being "jacked up". He referred to Ms. [REDACTED] having been uncooperative when he spoke to her in a civil manner to obtain information and to the added stress he was under because he was supervising a new recruit.

[29] What I have to decide is whether Cst. [REDACTED] interaction with Ms. [REDACTED] appears sufficient to substantiate allegations that he engaged in "abuse of authority"/"oppressive conduct" (s. 77(3)(a)(iii)), or "discourtesy" (s. 77(3)(g)). I will address this in turn.

[30] In OPCC File No. 2018-14290 (October 31, 2018), one of the allegations was that an officer had engaged in oppressive conduct when, after detaining the complainant, he told the complainant several times to shut up or he would be taken to the drunk tank for the night. Although Adjudicator Oppal was of the view

that the officer's conduct was "not a model of professionalism or courtesy", he held the words used did not rise to the level of oppressive conduct. In reaching this conclusion, he referred to *The Concise Oxford Dictionary* definition of "oppression": "prolonged harsh or cruel treatment or control", "mental distress", "the state of being oppressed": at para. 37. The current online *Oxford English Dictionary* (oed.com) defines "oppression" as "prolonged cruel or unjust treatment or exercise of authority, control, or power: tyranny; exploitation".

[31] Regardless of what view one takes of the appropriateness of some of the language used by Cst. [REDACTED] or his having raised his voice at times—it would appear out of frustration—in my view, there is no basis on which his conduct could be found to have risen to the level of being oppressive. Accordingly, I find the allegation of "abuse of authority"/"oppressive conduct" to be unsubstantiated.

[32] However, I am of the view Cst. [REDACTED] could be found to have acted with "discourtesy". While Ms. [REDACTED] was uncooperative and argumentative, it also appears that Cst. [REDACTED] language and demeanor were, at times, not in keeping with what would be considered appropriate in the circumstances. Accordingly, I find that allegation to be substantiated.

Next Steps: Notifications to Cst. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED]

[33] I hereby notify Cst. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] of the next steps in this proceeding.

[34] Cst. [REDACTED] will be offered a prehearing conference under s. 120 of the PA with respect to the allegation of "discourtesy".

[35] The range of disciplinary or corrective measures set out in s. 126(1) of the PA which might be appropriate in this case will, of course, be affected by the aggravating and mitigating factors set out in s. 126(2), most of which are not in evidence at this stage of the proceedings. However, based on the information contained in the FIR and what is contained on the Watchguard recording, the range of disciplinary or corrective measures that appears to be appropriate

include: (a) a written apology to Ms. [REDACTED] (b) a written reprimand; and (c) a verbal reprimand.

[36] For the assistance of the prehearing conference authority, if Cst. [REDACTED] has no disciplinary record and accepts responsibility for his actions, then I would consider a written apology and a verbal reprimand sufficient.

[37] If Cst. [REDACTED] declines a prehearing conference, a discipline proceeding must be convened within 40 business days from the date of this Notice. Pursuant to s. 119, Cst. [REDACTED] may file a request to call or cross-examine witnesses at the discipline proceeding. Such a request must be filed with the Registrar of the Office of the Police Complaint Commissioner within 10 business days of the receipt of this Notice.

[38] I am setting February 2, 2024, as the date for the commencement of the discipline proceedings. Since notice must be sent to various parties at least 15 business days prior to that date, if Cst. [REDACTED] does not accept the offer of a prehearing conference by January 12, 2024, or apply for an extension, then the offer of a prehearing conference is withdrawn and the discipline proceeding will commence at 9:00 a.m. on February 2, 2024. The hearing that day will be by way of a teleconference. If that date is not suitable to Cst. [REDACTED] and/or his counsel, then the Registrar should be advised forthwith and provided with alternative dates. The Registrar will provide the parties with the dial-in information for the teleconference.

[39] Mr. [REDACTED] and Ms. [REDACTED] have the right to make submissions at any discipline proceeding (s. 117(8)(b)) or, should Cst. [REDACTED] accept a prehearing conference, to the authority convening that conference (ss. 120(6), (7)). Section 113(1) of the *PA* provides:

- (1) At any time after receiving a copy of the final investigation report in this matter but at least 10 business days before the date of any discipline proceeding, or, if a prehearing conference is to be held, within 10 business days after receiving notice under Section 120(6), the complainant may make written or oral submissions, or both, to the

discipline authority or the prehearing conference authority, as the case may be, in relation to one or more of the following matters:

- (a) the complaint;
- (b) the adequacy of the investigation;
- (c) the disciplinary or corrective measures that would be appropriate.

If Mr. ■ or Ms. ■ wish to file written submissions, or request an opportunity to make oral submissions, then they should do so through the Registrar.

A handwritten signature in black ink, appearing to read 'S. David Frankel', written over a horizontal line.

S. David Frankel, K.C.
December 5, 2023