

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

AND

DECISION ON DISCIPLINARY OR CORRECTIVE MEASURES

PURSUANT TO SECTION 126 POLICE ACT, R.S.B.C. 1996, c. 267

TO: Sgt. Ryan Buhrig, #62 ("Sgt. B")
Surrey Police Service ("SPS")
C/O Claire Hatcher and Greg Cavouras
Jointly, as Counsel

AND TO: The Police Complaint Commissioner,
P. Rajan (the "Commissioner")
C/O Kate Phipps & Emma Ronsley,
Jointly, as Counsel to the Commissioner

AND TO: Chief Constable N. Lipinski
Surrey Police Service (the "Chief Constable")

AND TO: Insp. S. Meaden, Discipline Authority,
Metro Vancouver Transit Police ("MVTP")
(the "Discipline Authority")

Review on the Record Decision date: April 28, 2025

Disciplinary or Corrective Measures Decision date: May 30, 2025

Place: Victoria, B.C.

Disciplinary or Corrective Measures

Executive Summary

In a Review on the Record Decision rendered April 28, 2025, it was determined that the decision of the Discipline Authority dated July 18, 2024 was incorrect. The decision was found to be incorrect in assessing the evidence in the record with respect to section 77 (3)(i)(i) of the *Police Act* and the actions of Sgt. B.

The Review found that Sgt. B committed two disciplinary breaches of trust by intentionally disclosing information acquired by the Member in the course of his duties as a police officer contrary to section 77 (3)(i)(i) of the *Police Act*.

Submissions were invited on the issue of appropriate disciplinary or corrective measures. As Adjudicator, I asked Counsel to attempt to collaborate on a joint submission on this aspect of the proceedings, if possible. Considerable effort was devoted to this request, for which I am grateful to Counsel. The result has been a joint submission on all but one matter.

The joint submission reinforces the appropriateness of an approach that seeks to educate and not punish the Member. I have accepted the joint submission proposal that the Member receive advice as to conduct.

I have done so acknowledging the many mitigating circumstances relevant to the proven misconduct and the stellar professional record of Sgt. B before these proceedings commenced. I have also accepted that for many, there had been considerable confusion and uncertainty on the duties of members with respect to the handling and use of police sourced information, particularly in the context of union issues.

On a secondary matter, Counsel have not agreed on a proposal from the Commissioner that a recommendation be made to the Chief Constable of the Surrey Police Service on the lessons learned from these proceedings.

Having considered the submissions of the parties, I have agreed with the Commissioner's proposal and include a recommendation to the Chief Constable in this decision. I am satisfied that clarity with respect to the issues raised in these proceedings would be beneficial to all officers of the Surrey Police Service.

I Overview

- (1) On April 28, 2025, a decision with respect to this Review on the Record (the “Review Decision”) was rendered and found that Sgt. B had committed two disciplinary breaches of public trust by intentionally disclosing information acquired in the course of his duties as a police officer, contrary to section 77(3)(i)(i) of the Police act (the “Substantiated Misconduct”)
- (2) Matters were adjourned to receive submissions from Counsel on appropriate disciplinary or corrective measures.
- (3) All defined terms in the Review Decision apply to this component of the process relating to the Member.

II Legislative Framework:

- (4) The key legislative framework governing disciplinary or corrective measures in relation to substantiated misconduct is found in s. 126 of the *Police Act*. That section provides as follows:

Imposition of disciplinary or corrective measures in relation to members

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under s. 113 [complainant's right to make submissions], the discipline authority must, subject to this s. and s.s 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;*
- (b) reduce the member's rank;*
- (c) suspend the member without pay for not more than 30 scheduled working days;*
- (d) transfer or reassign the member within the municipal police department;*
- (e) require the member to work under close supervision;*
- (f) require the member to undertake specified training or retraining;*
- (g) require the member to undertake specified counselling or treatment;*
- (h) require the member to participate in a specified program or activity;*
- (i) reprimand the member in writing;*
- (j) reprimand the member verbally;*
- (k) give the member advice as to her or his conduct.*

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct;*
- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct;*
- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career;*
- (d) the likelihood of future misconduct by the member;*
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence;*
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct;*
- (g) the range of disciplinary or corrective measures taken in similar circumstances; and*
- (h) other aggravating or mitigating factors.*

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

- (5) In completing my analysis, I am required to consider all aggravating and mitigating circumstances in order to determine the just and appropriate disciplinary or corrective measures in relation to the Substantiated Misconduct. I must also consider the submissions of the Member and the Commissioner in the context of relevant law.
- (6) If I determine that one or more disciplinary or corrective measures are necessary, s. 126(3) of the *Police Act* provides that:

“an approach that seeks to correct and educate the Member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute”.

III Nature of the Misconduct

- (7) The key findings of fact relating to the Substantiated Misconduct set out in the Review Decision detail the public disclosure of police sourced information by the Member in the context of his duties as a Surrey Police Service Union representative.
- (8) The Decision makes clear that Sgt. B believed that he had the right, and even the duty, to disclose the subject information to the public. It also confirms that in considering the apparently conflicting duties between those of a police officer and a police union representative, Sgt. B erred, resulting in the findings of misconduct.

- (9) There is, however, no evidence to suggest that Sgt. B acted in anything but good faith and in what he perceived to be the best interests of the Surrey Police Services and the public.

Joint Submission

- (10) Counsel were invited to submit a joint submission, if possible, on this aspect of the proceedings. After due consideration, a joint submission was filed with the Registrar May 9, 2025.
- (11) It is the joint submission of Counsel that the appropriate disciplinary or corrective measure in this case is advice to the Member as to his conduct in accordance with section 126(1)(k) of the Police Act.
- (12) Counsel submit that the advice to Sgt. B should be to read the Review Decision itself which sets out the issues and expectations of police officers, particularly those with union responsibilities, with respect to police sourced information.
- (13) Counsel are also agreed that making such an order recognizes the unique nature and circumstances of the Substantiated Misconduct and properly emphasizes the value of an educational approach to discipline.
- (14) In the Supreme Court of Canada decision *R v Anthony-Cook*, 2016 SCC 43, the Court unanimously held that the sole test that courts must employ to decide if a joint submission is acceptable is the stringent “public interest test.” Pursuant to this test, trial judges in criminal proceedings are directed not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. In other words, a trial judge may only reject a jointly proposed sentence where it would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system.
- (15) Similar principles were set out in a more recent decision of the Supreme Court of Canada in *R. v. Nahanee* 2022 SCC 37.
- (16) Both Anthony – Cook and Nahanee were, of course, criminal trials on appeal, not statutory proceedings such as the Review on the Record relating to Sgt. B.

(17) Under the provisions of the Police Act, Adjudicators have a statutory duty to consider misconduct allegations in accordance with the defined review process. Part of that process includes requirements under section 141(10) of the Police Act as follows:

(10) After a review of a disciplinary decision under this section, the adjudicator must do the following:

- (a) decide whether any misconduct has been proven;
- (b) determine the appropriate disciplinary or corrective measures to be taken in relation to the member or former member in accordance with section 126 *[imposition of disciplinary or corrective measures]* or 127 *[proposed disciplinary or corrective measures]*;
- (c) 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.

(18) At this stage of proceedings, it is my role to determine the appropriate disciplinary or corrective measures based on the findings relating to misconduct. I do not consider it to be a derogation of my statutory role to invite, and consider, a joint submission from Counsel.

(19) The joint submission itself addresses many of the statutory factors under section 126, and also provides the joint views of Counsel with respect to the substantiated misconduct of Sgt. B. Submissions jointly supported by the key parties to the proceeding are clearly of assistance in making the required determinations.

(20) Although this is a statutory proceeding governed by administrative law, and not criminal law, I am satisfied that the key principles set out in *Anthony-Cook* and *Nahanee* should apply to joint submissions, provided that the statutory considerations under section 126(2) are each addressed, and the ultimate disposition determined with those factors in mind.

(21) I will therefore turn to consideration of the factors under section 126(2) of the Police Act taking into account the joint submission of the parties.

VI Aggravating and Mitigating Circumstances

(i) Seriousness of the Misconduct s. 126(2)(a)

- (22) The Substantiated Misconduct is of a less serious character because no identifiable member of the public was harmed by the disclosures made by the Member. Furthermore, no specific damage resulted to the Surrey Police Service.
- (23) This is a mitigating factor in considering the Substantiated Misconduct.

(ii) Record of Employment s. 126(2)(b)

- (24) The information made available concerning the Members' record of employment confirms that Sgt. B is a highly accomplished police officer having received numerous awards and commendations for his service.
- (25) Sgt. B has also been the recipient of positive and supportive performance reviews in the course of his service to the RCMP and most recently, the Surrey Police Service.
- (26) There is no material in the record of employment for the Member relevant to consideration of the Substantiated Misconduct.
- (27) Overall, the Member's positive record of employment and performance in his roles as police officers serves as a mitigating factor.

(iii) Impact of Proposed Measures on Member, their Family and their Career (s. 126(2)(c))

- (28) Implicit in the imposition of any disciplinary or corrective measures under section 126 is some element of impact on the Member and his family.
- (29) I find that the potential impact of disciplinary or corrective measures could have an impact for the Member in terms of income, benefits and future promotion prospects.

- (30) I am satisfied that Sgt. B's submissions on this point properly raise the significant difficulties that have ensued as the Member weathered the storm of the misconduct allegations. I further accept that this has been particularly difficult in the context of the transition that has taken place involving the Surrey Police Service.
- (31) In all of the circumstances, I find that the impact of potential disciplinary measures outlined in the Section 117 Decision are properly raised as a mitigating factor in considering the appropriate outcomes for the Member.

(iv) The Likelihood of Future Misconduct by the Member (s.126(2)(d))

- (32) Sgt. B has confirmed through Counsel that the issues that gave rise to these proceedings have resulted in his recognition and assurance that he will not engage in similar conduct again.
- (33) As such, I conclude that there is a low risk of future misconduct on the part of Sgt. B.
- (34) This consideration is therefore a mitigating factor in evaluating appropriate disciplinary or corrective measures.

(v) Whether the Member Accepts Responsibility for the Misconduct and is Willing to Take Steps to Prevent its Recurrence (s. 126(2)(e))

- (35) I am satisfied that Sgt. B genuinely accepts responsibility for the misconduct that has been substantiated. He has shown insight into the issues and the law as I have outlined it.
- (36) I am fully satisfied that Sgt. B is willing and able to take appropriate steps to ensure that such misconduct never occurs again. Such a finding is a mitigating factor in these proceedings.

(vi) The Degree to Which the Municipal Police Department's Policies, Standing Orders or Internal Procedures, or the Actions of the Member's Supervisor, Contributed to the Misconduct
(s. 126(2)(f))

- (37) There is no evidence of any relevant department policies, standing orders, internal procedures or actions of the Member's Supervisor that might have contributed to the acts of misconduct which are the subject of these proceedings.
- (38) The issues arising in this case resulted from the uncertain boundary between the duties of Sgt. B as a police officer and union representative. The Review Decision should provide clarity on those matters as they relate to the use and distribution of police sourced information.

(vii) The Range of Disciplinary or Corrective Measures Taken in Similar Circumstances s. 126(2)(g)

- (39) A review of the range of disciplinary or corrective measures taken in similar circumstances is important to ensure that some degree of parity is applied to Sgt. B dealing with misconduct sanctions in similar circumstances.
- (40) Counsel have both indicated that the circumstances of this case are unique and have offered no authorities relevant to the facts of Sgt. B's case.

IX Analysis and Order

- (41) As noted above, section 126(3) of the *Police Act* provides that if I consider that one or more disciplinary or corrective measures are necessary, I should prioritize an approach that seeks to correct and educate the Member, unless it is unworkable or would bring the administration of police discipline into disrepute.
- (42) Having considered all of the foregoing, including the aggravating and mitigating factors noted above, the evidence adduced during the review process, and, of course, the joint submission of Counsel, I am satisfied that the focus of this decision must be to correct and educate the Member. I am also satisfied that doing so would not bring the administration of police discipline into disrepute. nor prove to be unworkable.

- (43) What took place with the Member was an important error, but taken in apparent ignorance of the Member's duties with respect to police sourced information.
- (44) Having considered the evidence and submissions of the parties, as well as the aggravating and mitigating circumstances, I am, pursuant to sections 141(10), 126(1) (k) and 127 of the *Police Act*, proposing Sgt. B receive advice as to his conduct by reading the Review Decision in its entirety.
- (45) I have every confidence that with the proposed corrective outcome, the Sgt. B will continue his career as a positive and constructive officer of the law in a diverse community.

X Recommendation

- (46) As noted, the joint submission of Counsel did not extend to a proposal of the Commissioner to consider a recommendation to the Chief Constable pursuant to section 141(10)(c) of the *Police Act*.
- (47) The proposal is that a recommendation be made to the Chief Constable that information be shared with the members of the Surrey Police Service regarding the Review Decision conclusions in this case. Specifically it is submitted that the Chief Constable share with members the elements of the Review Decision concerning misconduct by way of *Improper Disclosure*, and the application of the misconduct provisions of the *Police Act* to members carrying out union activities (the "Proposal")
- (48) I am satisfied that the Commissioner's Proposal has merit and therefore make that recommendation to the Chief Constable.

Brian M. Neal

Brian M. Neal K.C. (rt)
Discipline Authority
Victoria, B.C.
May 30, 2025