



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

CONCLUSION OF PROCEEDINGS

Pursuant to s.133(6) of the *Police Act*, RSBC 1996 c.367

OPCC File 2020-18123
March 15, 2024

To: Ms. [REDACTED] (Complainant)

And to: Constable [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: The Honourable Judge Carol Baird Ellan (ret'd) (Discipline Authority)
Retired Judge of the Provincial Court of British Columbia

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

The Office of the Police Complaint Commissioner (OPCC) completed its review of the decision issued by the Discipline Authority pursuant to section 133 of the *Police Act* in this matter. The Discipline Authority found the following allegation to be substantiated:

1. *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the *Police Act*; specifically, the member recklessly failed to adhere to police standards requiring compassion as an element of the next-of-kin notification

Discipline Proposed:

- (a) pursuant to Section 126(1)(d), reassignment to the Missing Persons Unit for a period of three months;
- (b) pursuant to Section 126(1)(f), retake the Justice Institute of BC training on next-of-kin notifications within the next year and provide written confirmation to me of its completion;
- (c) pursuant to Section 126(a)(h), complete a review of all of the materials provided in Appendix A to this decision within three months, and provide written confirmation to me of completion;

Prabhu Rajan
Police Complaint Commissioner

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- (d) pursuant to Section 126(1)(f), complete at least two further courses, including online training, in sensitivity and cultural awareness with an emphasis on Indigenous matters, within the next two years, with written confirmation to me of the courses completed;
- (e) pursuant to Section 126(1)(e), not perform any next-of-kin notifications until after confirmation of completion of the items in paragraphs (a) to (c) above (except as may occur under supervision while assigned to the Missing Persons Unit), and until after you have observed at least six next-of-kin notifications conducted by at least three different officers with greater experience in conducting them; thereafter work under close supervision in conducting next-of-kin notifications until you have conducted six such notifications; with written confirmation to me of the completion of each of these requirements; and
- (f) pursuant to Section 126(1)(h), provide three written apologies, with full acknowledgement of the nature of the misconduct, in a form approved by me, to the complainant, her sister, and her niece, within three months.

The complainant and the member were provided a copy of the Discipline Authority's findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures from the discipline proceeding. The complainant and the member were informed that if they were aggrieved by either the findings or determinations they could file a written request with the Police Complaint Commissioner to arrange a Public Hearing or Review on the Record. Pursuant to section 136(1) of the *Police Act*, such a request must be filed within 20 business days of receipt of the review of discipline proceedings.

On February 8, 2024, my Office received a request from the member via counsel requesting that the Police Complaint Commissioner exercise his authority to arrange a Public Hearing or, in the alternative, a Review on the Record pursuant to the *Police Act*.

Based on a review of the available evidence, I am satisfied that the Discipline Authority appropriately determined the allegation of *Neglect of Duty* to be substantiated on the basis of the reasoning provided. The Discipline Authority analyzed whether or not there is a duty or departmental standard requiring compassion as a component of a next-of-kin notification. Based on the material on the record, which included documents provided to recruits at the Justice Institute of British Columbia (JIBC), the Discipline Authority found that the materials "amply support a finding that the element of compassion is a prominent feature in the death notification training materials for new recruits at the JIBC". The Discipline Authority concluded that it is "not supportable" that there is no standard of compassion in departmental policy in these situations.

The Discipline Authority went on to assess whether the member's failure in this matter was either intentional or reckless. The Discipline Authority concluded that the member recklessly departed from the departmental standard of compassion in relation to the death notification.

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Member's counsel filed submissions that the section 125 decision was incorrect due, in part, to members having bad days and good days; performance issues are not misconduct; nothing deliberate was done to harm or hurt the complainant; the instructive materials do not create a clearly articulated standard of conduct; compassion is subjective and broad; and the member responded different than others, perhaps different than most, but that does not equate to misconduct.

Based on a review of the Discipline Authority's findings under section 125, I do not consider there is a reasonable basis to believe the findings are incorrect. The Discipline Authority provided a comprehensive review and analysis of the material in reaching her decision and it is reasonable in the circumstances.

In relation to the disciplinary or corrective measures proposed, in considering all the relevant factors in this case, I do not consider that there is a reasonable basis to believe that the Discipline Authority incorrectly applied section 126 in proposing these measures under section 128 of the *Police Act*.

The Discipline Authority undertook an approach to correct and educate the member but did not agree with the member that an apology would be sufficient to address the need for corrective action and education. The Discipline Authority agreed with the complainant that there is still a need for acceptance of responsibility and accountability in this case and the Discipline Authority considered a further need for corrective measures "in order to move the member toward recognition of the need for diligence in relation to her duties to vulnerable members of the public". The Discipline Authority concluded that suspension was not necessary or appropriate.

Member's counsel submitted that the proposed measures are unreasonable in the circumstances. Counsel pointed out that this incident occurred over four and a half years ago and the member has had an opportunity to reflect on her behaviour and has undertaken a training course on her own initiative. Counsel further submitted that some measures are excessive and time consuming that will limit the member's career and that there is no need to retake a course or shadow other members for months. Counsel submitted that the effect of the training is purely punitive and will likely interfere with the member's other career aspirations.

In my view, the disciplinary or corrective measures appear appropriate in these circumstances. This was a serious matter that, as indicated by the complainant, changed her life forever and caused her "unimaginable pain and suffering". The impact of this incident on the complainant has been, and continues to be, profound. Additional training and courses would serve to enhance the member's skill set in this area to mitigate against a reoccurrence. A re-assignment to the Missing Person Unit is of a short duration of three months and may serve the purpose of assisting the member's career, contrary to counsel's submission.

While the underlying incident did occur a number of years ago and has likely provided the member time to reflect on her behaviour, the complainant, an Indigenous mother who lost her only child, has suffered through significant emotional harm exacerbated by the member's notification.

Notwithstanding that there is no reason to question the Displine Authority's decision in this matter, a Public Hearing or Review on the Record would also prolong this harm and could serve to undermine public confidence in the disciplinary process.

In addition, this matter has proceeded through an investigation, a review by a retired Judge, and a discipline proceeding in front of the retired Judge where further investigation was conducted. Therefore, there is no reasonable prospect that a Public Hearing or Review on the Record would elicit additional information that might alter the outcome.

Therefore, there are insufficient grounds to arrange a Public Hearing or Review on the Record in the circumstances. The decision to conclude this matter is final and this office will take no further action.

In relation to the substantiated allegation, the disciplinary or corrective measures imposed are approved. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.



Prabhu Rajan
Police Complaint Commissioner