

Form 3

OPCC FILE No. 2022-21634

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

and

IN THE MATTER OF A DISCIPLINE HEARING UNDER SECTION 124

and

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST Cst.
[REDACTED] OF THE CENTRAL SAANICH POLICE SERVICE

FINDINGS OF DISCIPLINE AUTHORITY

(Section 125(b) Police Act)

Name of member involved:

[REDACTED], Cst. # [REDACTED]

Police department, designated policing unit or designated law enforcement unit:

Central Saanich Police Service

Date of discipline proceeding:

December 2, 2023, January 2, 2024, January 30, 2024

In relation to each allegation of misconduct against you, my findings are as follows:

Misconduct: Neglect of duty arising under section 77(3)(m)(ii) of the *Police Act*, the

particulars of which are that the Member, on March 30, 2022, is alleged to have committed a disciplinary breach of public trust of neglect of duty, involving a failure to provide the Complainant with access to counsel without delay contrary to section 10(b) of the Canadian Charter of Rights and Freedoms, s 8, Part 1 of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Misconduct: Deceit arising under section 77(3)(f)(i)(B) of the Police Act, particulars of which are that the Member, on March 30, 2022, is alleged to have committed a disciplinary breach of public trust, deceit, involving writing in an official report and notes that the Complainant did not want access to counsel when the Complainant did want counsel.

Date of alleged misconduct:

2022/03/30

Member's reply to allegations:

Deny

Findings and reasons:

I. Decision Summary and Overview of Proceedings

1. This is a decision made pursuant to sections 123, 124, and 125 of the *Police Act* relating to complaints of misconduct concerning Cst. [REDACTED] a member of the Central Saanich Police Service.
2. The misconduct is alleged to have taken place March 30, 2022. Cst. [REDACTED] attended as a backup officer to a report of assaults at a rural property in the town of Central Saanich. When he arrived, [REDACTED] (the Complainant) was in handcuffs in the back of a police car. Cst. [REDACTED] learned that the Complainant had not been read his Charter Rights and after checking with the investigating officer, Cst. [REDACTED] proceeded to read the Complainant his Charter Rights as police officers are required by law to do. The Complainant alleges that he had been handcuffed in the back of the police car for some 90 minutes prior to the reading of his Charter Rights. The Complainant acknowledged that his Charter Rights were read to him, but alleges that he was not provided access to counsel as requested. Cst. [REDACTED] recorded in his notes and official police reports that the Complainant did not request a lawyer but asserted in evidence that in his notes and his Prime report he was referring to the fact that the Complainant wanted to speak to his own lawyer, and not a lawyer obtained through Legal Aid and arranged for by the Member.

3. I was appointed Adjudicator in connection with this matter as a result of the Police Complaint Commissioner's (the "Commissioner") Order of July 18, 2023 made in accordance with section 117(4) of the *Police Act*.
4. On April 11, 2022 the Office of the Police Complaint Commissioner (the "OPCC") received a complaint from the Complainant concerning his interaction with the Central Saanich Police Service ("CSPS") on March 30, 2022. The OPCC determined the complaint to be admissible pursuant to Division 3 of the Police Act and directed the CSPS to conduct an investigation. The investigation took place through the summer and fall of 2022. The complaint involved multiple Members of the Central Saanich Police Service.
5. On March 3, 2023 the Commissioner decided that the complaint should be investigated externally. The Commissioner referred the matter to the Saanich Police Department (the "SPD") and SPD Sgt. [REDACTED] was appointed as the Investigating Officer. SPD Insp. [REDACTED] was delegated by SPD Chief Cst. Dean Duthie to act as the Discipline Authority pursuant to section 134 of the Police Act.
6. On June 5, 2023 the Investigating Officer completed his investigation and submitted the Final Investigative report (FIR) to the Discipline Authority. On June 19, 2023 the Discipline Authority issued his decision pursuant to section 112 of the *Police Act*. The decision concerned five members of the CSPS and identified 13 allegations of misconduct against the members, including nine allegations of Abuse of Authority, three allegations of Neglect of Duty and one allegation of Deceit. The Discipline Authority determined that none of the allegations were substantiated.
7. On June 20, 2023 the Commissioner received a request from the Complainant that a retired Judge be appointed to review the FIR pursuant to section 117 of the *Police Act* and to make his or her own decision in the matter. The July 18, 2023 order of the Commissioner directed me to review the allegations with respect to Cst. [REDACTED] and Cst. [REDACTED]. Complaints of misconduct concerning the action of the other members involved on March 30, 2022 were not included in my terms of reference.
8. On September 14, 2023 my decision concerning the section 117 review of the misconduct allegations concerning Cst. [REDACTED] and Cst. [REDACTED] was delivered. I found that the allegations of misconduct concerning Cst. [REDACTED] specifically Neglect of Duty and Deceit, appeared to be substantiated. I found a third allegation of Abuse of Authority not substantiated. The allegations with respect to Cst. [REDACTED] went to a prehearing conference and were resolved there.
9. As a result of my decision made pursuant to section 117(7) of the Police Act, I became the Discipline Authority concerning the misconduct allegations relating to Cst. [REDACTED] and heard further evidence concerning the allegations.

II. Discipline Proceeding-History of Proceedings

10. This is a Discipline Proceeding pursuant to sections 123 – 125 of the Police Act relating to allegations of Neglect of Duty and Deceit. In accordance with section 117(9) of the Police Act, the Discipline Proceeding process commenced concerning the allegations on November 3, 2023.
11. Cst. [REDACTED] did not make an application to call witnesses.
12. The Complainant was provided with a Notice of Discipline Proceeding under section 123(1). That notice satisfied the requirements of Section 113 of the Police Act, notifying the Complainant that he had the right to make written or oral submissions to the Discipline Authority in relation to one or more of the following matters – the complaint, the adequacy of the investigation, and/or the disciplinary or corrective measures that would be appropriate. The Complainant elected not to make any written or oral submissions.
13. The FIR, the submissions of the Complainant and the testimony of Cst. [REDACTED] and Sgt. [REDACTED] along with the facts set out in paragraphs 23 to 43 of my section 117 ruling comprise the record with respect to these proceedings (the “Record”). The facts set out in paragraphs 23 to 43 outline the background surrounding the investigation of the allegations of assault and set the scene for what Cst. [REDACTED] encountered and what he did after he arrived. For ease of reference these paragraphs are appended to this decision as Schedule One. They form part of the Record with the consent of counsel for the Member.

III. Misconduct and the Police Act

14. Section 77 of the *Police Act* sets out the definition of misconduct relevant to the allegations concerning the member. Specifically, subsection 77(1) of the *Police Act* provides, in part, as follows:

77(1) In this part, “misconduct” means

 - (a) conduct that constitutes a public trust offence described in subsection (2), or
 - (b) conduct that constitutes
 - (i) an offence under section 86 [offences to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint] or 106 [offences to hinder, delay, obstruct or interfere with investigating officer], or

- (ii) a disciplinary breach of public trust described in subsection (3) of this section...

(2) A public trust offence is an offence under an enactment of Canada, or of any province or territory in Canada, a conviction in respect of which does or would likely

- (a) render a member unfit to perform her or his duties as a member, or
- (b) discredit the reputation of the municipal police department with which the member is employed.

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(f) "deceit", which is any of the following:

- (i) in the capacity of a member, making or procuring the making of
 - (A) any oral or written statement, or
 - (B) any entry in an official document or record, that, to the member's knowledge, is false or misleading:

(m) "neglect of duty"; which is neglecting, without good or sufficient cause, to do any of the following:

- (i) ...
- (ii) promptly and diligently do anything that it is one's duty as a member to do;
- (ii) promptly and diligently obey a lawful order of a supervisor.

15. An important overall limitation to the definition of misconduct in section 77 of the *Police Act* is found in subsection 77(4) as follows:

77(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

16. This review is, therefore, the examination of all of the evidence submitted related to the above noted allegation of misconduct as qualified by section 77(4).

IV. The law - Neglect of Duty

17. Neglect of Duty is defined in Section 77(3)(m)(ii) of the *Police Act* as neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do. I must find (i) a duty existed, (ii) the respondent police officer neglected or omitted to promptly and diligently discharge the relevant duty, and (iii) there is no lawful excuse for the failure.
18. In *Conclusion of Proceedings, OPCC file 2011-6912*, PCC Lowe established the following statutory elements that should be applied when assessing the Neglect of Duty delict:

...The spectrum of performance spans from when a member clearly takes no action, and fails to perform any aspect of their required duties, through to a level in which a member performs their required duties in an exemplary manner. The difficulty in determining whether misconduct has occurred lies in the middle of the spectrum and must be resolved through the application of the objective standard of reasonableness in terms of an Officer's conduct.

19. The oft-cited decision of *Hawkes v. McNeilly*, 2016 ONSC 6402 establishes that the impugned conduct must include an element of willfulness in the police officer's neglect or there must be a degree of neglect which would make the matter cross the line from a mere job performance issue to a matter of misconduct.
20. In *Korchinski v Office of the Independent Police Review Director* 2022 ONSC 6074 the Court set out the element of willfulness required for a finding of neglect of duty:

45.... the impugned conduct must include an element of willfulness in the police officer's neglect or there must be a degree of neglect which would make the matter cross the line from a mere job performance issue to a matter of misconduct. In other words, mere failure to comply is not enough. There must be some evidence of deliberateness or recklessness to the failure to comply or some meaningful level of moral culpability to attract disciplinary penalties (*Brown, supra*, at p.11); *Allen v Alberta* (Law Enforcement Review Board), 2013 ABCA 187 at para 33).

46. As a breach of the Code is a serious finding against an officer which may result in significant penalties, not every misstep or failure to follow policy would "extend into the realm of misconduct." (*Kraljevic and Svidran*, 2017 ONCPC 21 (CanLII) at para 24; *P. (G.) v. Ontario (Attorney General)*, [1996] O.J. No. 1298 (Div.Ct.) at paras 85 to 87) (emphasis added)

Deceit

21. I set out what I viewed to be the legal test for Deceit in: OPCC Decision of Review on the Record, RR 18-03 ("OPCC RR 18-03"). The essential elements of this potential misconduct are as follows:

1. The member made or attempted to make an oral or written statement or,
2. The member "procured" or attempted to procure the making of an oral or written statement,
3. That statement was made or procured in the member's capacity as a police officer,
4. That statement was false or misleading,
5. The member had knowledge that the statement was false or misleading.

22. An example of the application of these elements in the context of police discipline is found in *Precious and Hamilton Police Department* 2002 CanLII 63881.

In *Precious*, an officer was alleged to have not recorded key aspects of a domestic violence call in his notebook after he interviewed the complainant. The criminal trial against the accused's husband was negatively impacted by the absence of a notation. Eventually, the member was charged with perjury. In the discipline context, however, the Tribunal stated:

In order to establish a charge of deceit it is necessary to show that an officer "willfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties". As was noted in *McCoy and Fort Francis Police Services* (1969), 1 O.P.R. 16 (O.P.C.), to properly convict an officer under this provision it is necessary to show "an intention to deceive".

Further, an inaccurate statement by itself, in the absence of proof of willfulness or intent will not support a conviction. As we said in *Burgess and St. Thomas Police Service* (1989), 2 O.P.R. 822 (O.P.C.) at page 828:

23. It is the allegations of misconduct arising under section 77(3)(m)(ii) and section 77(3)(f)(i)(B) of the *Police Act* concerning allegations of neglect of duty and deceit that are relevant to this review. This review is, therefore, the examination of all of the evidence submitted in these proceedings related to the allegations of misconduct.

V. Burden of Proof

24. The burden of proof lies with the body alleging the misconduct. The standard of proof is on the balance of probabilities. This was clearly stated by the Supreme Court of Canada in *F.H v McDougall*, [2008] 3 S.C.R. 41 at para 49:

[49]... I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

The court noted, in paragraph 46, that in order to satisfy the balance of probabilities standard, the evidence must be sufficiently clear, convincing and cogent:

[46]... Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make at decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

V. Position of Counsel for the Member

25. With respect to the allegation of Neglect of Duty, Counsel argues that Cst. ████████ did not facilitate access to counsel for the complainant because the complainant wanted to speak to his own lawyer and did not want to access his own lawyer from the back of a police car. Cst. ████████ maintains that he heard and understood the Complainant articulate that he would speak to his own lawyer at a later time, after his release.
26. Counsel maintains that at all material times, Cst. ████████ was aware that he was being filmed and recorded and was careful to follow procedure. Unfortunately, he was not aware that both sides of the conversation were not audible on the video. Counsel notes that the investigating officer in the FIR (Sgt. ████████) interpreted Cst. ████████ to have asked the question of the Complainant, "you wanna talk to your own lawyer? Okay".

Counsel notes that at the Disciplinary Proceeding the investigating Officer Sgt. ████████ agreed that Cst. ████████ actually stated the word "gonna" and not "wanna".

In this regard, Sgt. [REDACTED]'s evidence accords with that of Cst. [REDACTED]

27. Counsel for Cst. [REDACTED] also notes that in his complaint to the OPCC, the Complainant never mentioned lack of access to counsel. The preponderance of evidence supports the conclusion that the Complainant did not want to speak to his lawyer on scene and told Cst. [REDACTED] as much. Accordingly, Cst. [REDACTED] cannot be found to have denied the Complainant access to counsel at the scene, since the Complainant wished to access his own lawyer at a later time.
28. With respect to the allegation of Deceit, Counsel for Cst. [REDACTED] argues that given Cst. [REDACTED] understanding of the Complainant's position, it cannot be said that the statements made by Cst. [REDACTED] were knowingly misleading or untrue. Counsel points out that Cst. [REDACTED] believed that the complainant did not wish to speak to his lawyer on the scene, knew that he was being recorded and knew that his colleagues would be forwarding a Report to Crown Counsel recommending an obstruction of justice charge against the Complainant. Counsel also points to Cst. [REDACTED]'s evidence at the Disciplinary Proceeding where he conceded that his notes were not "robust". If he had it to do all over again, he would have added something to the effect that the Complainant wished to talk to his own lawyer at a later time.

VI. Review of the Record - Evidence Not in Dispute

29. The Record does not suggest any dispute with respect to the following facts.
30. Cst. [REDACTED] attended the scene as a backup officer some time after the other officers were at the scene [See schedule one]. The Complainant was handcuffed and seated in the back of Cst. [REDACTED] police car. Cst. [REDACTED] was told that the Complainant was alleging an assault, but that the allegation was unfounded. At some point, Cst. [REDACTED] asked other members at the scene why the Complainant had been arrested and whether he had been provided with his Charter rights. Initially, Cst. [REDACTED] assumed that the Complainant's Charter rights had been read to him at the time of the arrest. On learning that they had not been provided, he read the Complainant his "Charter rights for obstruction". He told the Complainant that he had the right to counsel and reported in his notes and Prime report that the Complainant said he did not wish to speak to a lawyer.
31. In a follow-up interview with Sgt. [REDACTED] Cst. [REDACTED] was presented with a video taken by the Complainant's wife. In that video Cst. [REDACTED] is heard to state "you want to talk to your own lawyer, okay". In subsequent interviews and in his evidence at the Disciplinary Proceeding, Cst. [REDACTED] said he interpreted

the complainant's response that he wanted to talk to his own lawyer as meaning he wanted to talk to his own lawyer at a later time.

32. The Complainant did not initially complain about being denied access to counsel. The allegations arose after the Investigating Officer received the video recorded by the Complainant's wife. That video contained comments and editorialization by the Complainant's wife, and those comments are not evidence. What is clear from the evidence is that Cst. [REDACTED] was aware that the Complainant was about to be released from custody. There was discussion about whether the Complainant wished Cst. [REDACTED] to provide access to a Legal Aid lawyer.
33. On May 25, 2023 the complainant responded to follow-up email questions from Sgt. [REDACTED]

Question 2: *Do you recall what you said to Cst. [REDACTED] after he asked you if you wanted to talk to a lawyer?*

Answer: *Cst. [REDACTED] explained to me if I could [sic] afford a lawyer, one would be handed to me and he also stated a number to call what I assume were public lawyers and I told him no, I would like to call my lawyer.*

Question 3: *If you did want to speak to a lawyer, did you tell Cst. [REDACTED] when you wanted to speak with your lawyer (as in talking with a lawyer while still on scene or did you mention wanting to speak with a lawyer at a later time)?*

Answer: *I asked Cst. [REDACTED] about three times for me to call, MY OWN LAWYER.*

34. The Complainant was clear in stating that he wished to talk to his own lawyer. It is also apparent from the evidence that Cst. [REDACTED] was of the view that providing access to counsel while seated in the back of a police car was not optimal.

VII. Review of the Record – Evidence in Dispute

35. I am satisfied from the record that there are no facts in dispute that significantly affect an analysis of the issues I must decide.

VIII. Analysis

36. The law with respect to section 10(b) of the Charter is well established. In *R v Suberu*, 2009 SCC 3 the Supreme Court of Canada outlined the following interpretation:

[40] As with “detention”, any interpretation of the phrase “without delay” must be consistent with a purposive understanding of the Charter provision in which it occurs. As this Court noted in *R. v. Therens*, 1985 CanLII 29 (SCC), [1985] 1 S.C.R. 613, at pp. 641-42, and in *R. v. Bartle*, 1994 CanLII 64 (SCC), [1994] 3 S.C.R. 173, the purpose of s. 10(b) is to ensure that individuals know of their right to counsel, and have access to it, in situations where they suffer a significant deprivation of liberty due to state coercion which leaves them vulnerable to the exercise of state power and in a position of legal jeopardy. Specifically, the right to counsel is meant to assist detainees regain their liberty, and guard against the risk of involuntary self-incrimination.

[41] A situation of vulnerability relative to the state is created at the outset of a detention. Thus, the concerns about self-incrimination and the interference with liberty that s. 10(b) seeks to address are present as soon as a detention is effected. In order to protect against the risk of self-incrimination that results from the individuals being deprived of their liberty by the state, and in order to assist them in regaining their liberty, it is only logical that the phrase “without delay” must be interpreted as “immediately”. If the s. 10(b) right to counsel is to serve its intended purpose to mitigate the legal disadvantage and legal jeopardy faced by detainees, and to assist them in regaining their liberty, the police must immediately inform them of the right to counsel as soon as the detention arises.

[42] To allow for a delay between the outset of a detention and the engagement of the police duties under s. 10(b) creates an ill defined and unworkable test of the application of the s. 10(b) right. The right to counsel requires a stable and predictable definition. What constitutes a permissible delay is abstract and difficult to quantify, whereas the concept of immediacy leaves little room for misunderstanding. An ill-defined threshold for the application of the right to counsel must be avoided, particularly as it relates to a right that imposes specific obligations on the police. In our view, the words “without delay” mean “immediately” for the purposes of s. 10(b). Subject to concerns for officer or public safety, and such limitations as prescribed by law and justified under s. 1 of the Charter, the police have a duty to inform a detainee of his or her right to retain and instruct counsel, and a duty to facilitate that right immediately upon detention.

IX. Has the Allegation of Misconduct Been Established

Neglect of Duty

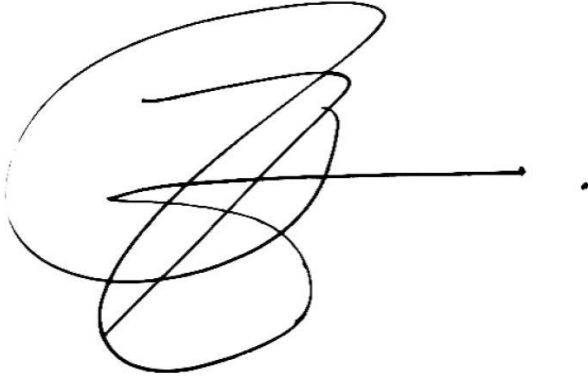
37. Cst. ██████ attended a relatively chaotic scene as a backup officer, arriving significantly after his fellow officers. After some investigation into the identity of the Complainant, Cst. ██████ learned that the Complainant had been arrested for obstruction and that his Charter Rights had not been read to him. He encountered the Complainant handcuffed in the back of Cst. ██████ police car. By this point, the Complainant's wife had arrived at the scene and was filming the police officers, as well as her husband in the back of the police car. Cst. ██████ decided to remedy the lack of Charter warning and proceeded to read the Complainant his Charter Rights. The Complainant was clear in stating that he did not wish to speak to a Legal Aid lawyer, but rather wanted to speak to his own lawyer.
38. It is significant that the Complainant did not complain about the lack of access to his own lawyer prior to the commencement of the investigation.
39. Cst. ██████ determined that the Complainant was going to be released imminently. He applied his mind to the issue of whether or not the Complainant wanted a call to a Legal Aid lawyer while seated in the back of the police car. Upon learning that the Complainant wished to speak to his own lawyer, I am satisfied that Cst. ██████ concluded that the issue of access to counsel had been satisfied and that the Complainant, upon his imminent release, would call his own lawyer. In this regard, I note that the Complainant has never asserted that he demanded a call to counsel while he was seated in the back of the police car.
40. I am also mindful that the Supreme Court of Canada in *Suberu*, supra emphasized that the purpose of section 10 (b) is to:

“ensure that individuals know of their right to counsel, and have access to it, in situations where they suffer a significant deprivation of liberty due to state coercion which leaves them vulnerable to the exercise of state power and in a position of legal jeopardy. Specifically, the right to counsel is meant to assist detainees regain their liberty, and guard against the risk of involuntary self-incrimination.”
41. In this case, Cst. ██████ knew that the Complainant was going to be released imminently and that there was not going to be any further police involvement with the Complainant at the scene.
42. Applying the law as set out in *Hawkes v. McNeilly*, supra I am satisfied that Cst. ██████ did not provide the Complainant immediate access to counsel

because he had concluded that it was not an issue. In this regard, I am satisfied that Cst. [REDACTED] actions did not involve an element of willfulness, nor can it be said that his actions, even if he had misinterpreted the words of the Complainant, involved a degree of blameworthiness which would elevate the matter to misconduct deserving of sanction under the *Police Act*.

Deceit

43. Cst. [REDACTED] recorded in his notes and a Prime report that the Complainant did not wish to speak to a lawyer. The allegation of deceit is serious and potentially career threatening. To substantiate such an allegation there must be clear evidence that the member made an entry in an official document or record knowing that it was false or misleading.
44. I have already concluded that Cst. [REDACTED] had determined that the issue of access to counsel had been satisfied given the fact that the Complainant was to be released imminently, wanted to speak to his own lawyer, and would contact his own lawyer upon his release.
45. Cst. [REDACTED] concedes that he should have recorded the fact that the Complainant wished to speak to his own lawyer upon his release rather than making the assertion that he did not wish to speak to a lawyer. The question is whether or not that mistake involved an "intention to deceive".
46. I have concluded that Cst. [REDACTED] did not record that the Complainant did not want to speak to a lawyer with an "intention to deceive". I am satisfied that he had applied his mind to the issue of whether or not the Complainant wished to access a Legal Aid lawyer while detained in the back of the police car. Having concluded that the Complainant's access to his own lawyer would occur after the Complainant's release, he recorded what he did in reference to the Complainant's assertion that he did not want a Legal Aid Lawyer. His actions do not satisfy the legal threshold necessary to substantiate the allegation of Deceit under the *Police Act*.
47. I find that the allegations of Neglect of Duty and Deceit under section 77(3)(m)(ii) and section 77(3)(f)(i)(B) of the *Police Act* have not been established on a balance of probabilities.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small dot.

Date: _____, 2024

Signature of discipline authority
Judge John (Jim) James Threlfall (rt.)

I acknowledge service of this form:

Date: _____, 2024

Signature of Constable [REDACTED]

SCHEDULE ONE

The Evidence

Circumstances Leading to Alleged Misconduct

23. The Complainant provided a number of statements including the original Complaint and subsequent statements to Investigating Officers. In summary, the Complainant identifies as a black man and resides with his wife and children in [REDACTED]. He is a member of the [REDACTED] and has an expertise in [REDACTED]. He voluntarily assists [REDACTED] particularly the elderly, with their [REDACTED] problems. As a result of the pandemic Zoom meetings became more common and his services more in demand. It was in that capacity that he met [REDACTED], a [REDACTED] male who was also a member of the [REDACTED]. On March 30, 2022 the Complainant received a call from Mr. [REDACTED] who wanted to meet with him at the [REDACTED] residence on [REDACTED] in Central Saanich. The Complainant agreed to meet Mr. [REDACTED].
24. The subsequent events that led to the complaints of misconduct all occurred after the Complainant attended on Mr. [REDACTED] at his home.
25. It is impossible on the basis of the information contained in the FIR to know exactly what happened or even precisely why Mr. [REDACTED] wanted to meet with the Complainant. Mr. [REDACTED] in a statement provided to the Investigating Officer indicated that the Complainant attended his property with a number of contractors for the purpose of determining whether or not the property was suitable for the placement of motor homes or trailers. The Complainant was not precise in his various statements as to why he was being asked to attend. He made no mention of attending with a number of contractors. He did say he attended reluctantly because he and his wife had planned a games night at their [REDACTED] home.
26. Adjacent to Mr. [REDACTED] home was a barn with a fenced in area in front of it. From the various witness statements, it appears that this was the property Mr. [REDACTED] wanted to show the Complainant in terms of potential development. The Complainant and Mr. [REDACTED] encountered a woman and man who were running dogs in the fenced area. Mr. [REDACTED] took exception to their presence and an animated discussion ensued. The woman apparently called Mr. [REDACTED] daughter, [REDACTED] for help. Ms. [REDACTED] in turn notified her partner and her daughter by telephone. Ms. [REDACTED] daughter in turn called 911 seeking help and notified her husband. They all subsequently attended at the property. Most were in possession of cell phones, and some started to record the subsequent events.
27. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] On the day in question Ms. [REDACTED] received a call from Ms. [REDACTED] asking her to come and collect her father. At the time Ms. [REDACTED] was on the property with her brother and dogs. When Ms. [REDACTED] arrived at the property the Complainant's vehicle was blocking the gate and Ms. [REDACTED] asked the Complainant to leave. She said he refused to budge. As she was confronting the Complainant and her father she said her father grabbed her hair and tried to pull her to him. She pushed her father away and that push also contacted the Complainant. Ms. [REDACTED] says at that point the Complainant said that she had hit him in the face.

28. Not surprisingly the Complainant had a different version of events. In his view Ms. [REDACTED] was aggressive with both he and her father. He maintains that Ms. [REDACTED] struck him in the face and also assaulted another male who was there. He says that he attempted to de-escalate the situation and indeed the video (one of eight made available to the Investigating Officer) shows the Complainant trying to calm the situation as he moves Mr. [REDACTED] towards the Complainant's vehicle. The Complainant is heard saying on a video that the situation was getting out of control and that he would call the police which he subsequently did.
29. The first call to police was made at 5:29 PM March 20, 2022 by [REDACTED] Ms. [REDACTED] daughter and Mr. [REDACTED] granddaughter. She told police that there was someone at her grandfather's house who had been told to stay away from it. The issue, she told the operator, was caused by her grandfather. The dispatcher in turn told the responding members that the caller was on her way to the property. The dispatcher provided additional information that suggested the elderly male, Mr. [REDACTED] and the caller's grandfather, was giving all of the family's money away.
30. At approximately the same time the Complainant called police. The dispatcher told the responding members that she had a male named [REDACTED] on the line who was the subject of another filed complaint suggesting that he was trying to defraud the elderly male. The call was classified as a necessary response to a "disturbance".
31. On his call to the CSPS, the Complainant said he had been assaulted by Ms. [REDACTED]. The Complainant told police that he was trying to have a conversation with a friend of his when a lady came up, got very irate and pushed him. When

asked where she hit him the Complainant said that she first took the gate and slammed it against him and that she hit him against his shoulder and pushed him away.

Evidence Regarding the Alleged Misconduct

32. The Record contains statements from the Complainant, Mr. [REDACTED] Ms. [REDACTED] and a number of other civilian witnesses. There are also statements from Cst. [REDACTED] and Cst. [REDACTED] and three other members of the CSPS. Eight video clips aid in clarifying the evidence. Below is a summary of the key evidence arising from the FIR.
33. Cst. [REDACTED] authored a PRIME report and provided a statement to the first Investigating Officer. Cst. [REDACTED] was the first member on scene. He had never met any of the parties but was privy to the information conveyed to him by the dispatcher. He decided that he needed to figure out what was going on and his first approach was to the elderly male, Mr. [REDACTED]. He attempted to converse with Mr. [REDACTED] but was interrupted by the Complainant who started recording the Member on his cell phone and continually repeated "I want your name and badge number". Cst. [REDACTED] tried to defuse the situation by suggesting that he would speak to the Complainant and all of the other parties but that the Complainant needed to stop repeating his demand for a name and badge number and needed to stop recording his attempts to interview Mr. [REDACTED]. When the Complainant refused to comply Cst. [REDACTED] told him that if he did not stop he would be arrested for obstruction. He did not stop and the Complainant was subsequently arrested for obstruction, handcuffed behind his back and placed into the back of a police car.
34. Cst. [REDACTED] continued to interview the other parties present. He spoke at some length to Ms. [REDACTED] and her daughter. They told Cst. [REDACTED] that the Complainant was attempting to defraud Mr. [REDACTED]. They indicated that Mr. [REDACTED] suffers from [REDACTED] had declined due to old age. They alleged that the Complainant had taken Mr. [REDACTED] to the bank the day before and Mr. [REDACTED] had taken out [REDACTED] in cash. They indicated that the Complainant was attempting to take advantage of Mr. [REDACTED] [REDACTED].
35. Cst. [REDACTED] was also shown video clips which indicated that there had been some pushing between Ms. [REDACTED] and the Complainant. Armed with the information he had received from dispatch, and the information received from Mr. [REDACTED] daughter and granddaughter, Cst. [REDACTED] concluded that no assault had occurred.
36. Cst. [REDACTED] did not complete his interview with Mr. [REDACTED] and never interviewed the Complainant.

37. Cst. [REDACTED] also failed to advise the Complainant of his Charter right under section 10(b) of the Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (the "Charter"), to be informed of his right to retain and instruct counsel without delay. The Complainant's Charter rights were subsequently provided by Cst. [REDACTED] approximately 90 minutes after the arrest. When asked to explain the delay Cst. [REDACTED] replied that he did not really have a reason for the delay, he was not sure if he forgot or whether there was just so much going on. He said he still had not figured out "what the heck "was going on when he arrested the Complainant. He said that best practice is to read an arrested individual their Charter rights from a card as soon as possible.
38. The Complainant's version of the initial encounter is significantly different. He maintained that after Cst. [REDACTED] arrival, a female Constable (who later turned out to be Cst. [REDACTED] arrived and approached Ms. [REDACTED] and stated words to the effect "do not worry we are here to protect you". The Complainant was immediately concerned that the CSPS were taking sides. As a black man he was concerned that he was being singled out and consequently felt it appropriate to video his interaction with the members and to insist that they provide their names and badge numbers. In other words, he was approaching the tense situation believing that the police had made up their minds. At the same time the police were approaching the situation with information suggesting that the Complainant was attempting to defraud a [REDACTED] with [REDACTED] [REDACTED].
39. Cst. [REDACTED] also provided a statement. He said that he arrived on the scene after the other members. Cst. [REDACTED] told him that the Complainant was alleging an assault but that was not the case. The other CSPS members provided him with the back story of why police were called. It was Cst. [REDACTED] impression that there were some issues with who the Complainant was as he had no form of identification on him when arrested. Cst. [REDACTED] therefore decided to search the Complainant's vehicle and in it he found a [REDACTED] [REDACTED] driver's license. From his experience in traffic, he concluded that the Complainant was not authorized to drive in British Columbia. He decided to seize the [REDACTED] driver's license.
40. At some point Cst. [REDACTED] asked why the Complainant had been arrested and whether he had been provided with his Charter rights. Initially, Cst. [REDACTED] had assumed that the Complainant's Charter rights had been read to him at the time of the arrest. Learning that the Charter rights had not been given he read the Complainant his "charter rights for obstruction". He told the Complainant that he had the right to counsel and reported in a statement that the Complainant said he did not want to speak to a lawyer. In a follow-up interview Cst. [REDACTED] was presented with a video taken by the Complainant's wife at the scene. In the video

Cst. [REDACTED] is heard to state “you want to talk to your own lawyer, okay.” The Complainant maintains that he did wish to speak to a lawyer. Of note, Cst. [REDACTED] also recorded in his PRIME report that the Complainant did not wish to talk to a lawyer. In a subsequent answer to questions posed by the Investigating Officer Cst. [REDACTED] said he interpreted the Complainant’s response that he wanted to talk to his own lawyer as meaning he wanted to talk to his own lawyer later.

41. Cst. [REDACTED] also phoned enforcement for the Canadian Border Services to see whether or not the Complainant was in the country legally. He did this because the Complainant was carrying the [REDACTED] driver’s license. In his statement Cst. [REDACTED] said that he searched the vehicle because there was a concern that the Complainant was lying about who he was and he had no way of proving who he was.
42. The issue of whether the attending members were able to identify the Complainant is unclear from the Record. There is no question that the civilians at the scene identified the Complainant. In his statement Cst. [REDACTED] indicated that the Complainant produced photo identification and it was on that basis that he decided to release him on an undertaking to appear. The PRIME report prepared by Cst. [REDACTED] indicates that the Complainant had an address, phone number and a British Columbia driver’s license. The Complainant in his statement conceded that he did not possess a valid BC driver’s license. He said he was a citizen of the world and travelled widely and therefore relied on his [REDACTED] Driver’s license. He agreed he had been in British Columbia for some [REDACTED]
43. During the interaction between CSPS and the Complainant, the Complainant’s wife and his [REDACTED] Mr. [REDACTED] arrived on the scene and began videotaping. That video with audio shows the Complainant’s wife continually asking why the Complainant is in custody. In particular, she wants to know why her husband was arrested when he was the one who called the police alleging an assault. She did not receive what she considered to be an appropriate explanation. At all times she was patient and controlled in her inquiries with the members at the scene. She explained that she had not been able to reach her husband but had spoken with Mr. [REDACTED] who told her that her that both he and her husband had been punched by his daughter, Ms. [REDACTED] Mr. [REDACTED] explained to her that the Complainant continued to speak when he was told not to and that he had been subsequently arrested. The Complainant’s wife wanted to know why Ms. [REDACTED] was allowed to drive off, having assaulted her husband and he remained in custody in the back of the police car. At one point she suggested that the only difference was his skin colour. Cst. [REDACTED] took exception to that comment and said it was insulting and that there were other explanations. The one he offered was that police had investigated the Complainant’s allegation and that no

assault had occurred. The Complainant's wife wanted to know whether or not they had interviewed Mr. [REDACTED] or the Complainant. No answer was provided.