

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: Constable [REDACTED] ("Cst. T")
c/o Claire Hatcher, Counsel

AND TO: Constable [REDACTED] ("Cst. U")
c/o Scott Wright, Counsel

AND TO: Constable [REDACTED] ("Cst. D")
c/o Mike Sherriff, Counsel

AND TO: Prabhu Rajan
Police Complaint Commissioner (the "Commissioner")

AND TO: [REDACTED] (the "Complainant")

Discipline Proceeding Decision date: December 18, 2024

Disciplinary or Corrective Measures Decision date: January 22, 2025

Place: Victoria, B.C.

Disciplinary or Corrective Measures

Executive Summary

In a Disciplinary Decision rendered December 18, 2024, the Members were each found to have admitted substantiated allegations of misconduct by way of disciplinary breaches of public trust. Specifically, the misconduct substantiated against the Members was Discourtesy with respect to the Affected Person, as defined in the Discipline Decision, contrary to section 77(3)g of the *Police Act*;

Having considered the submissions of the Members, and the Complainant, the provisions of section 126(2) of the Police Act and relevant law, I have determined as follows:

- (a) A discipline approach that seeks to correct and educate the Members must take priority on the facts of this case;
- (b) It is proposed that with respect to Cst. T, Cst. D and Cst. U, each Member receive a written reprimand and prepare an apology to the Affected Person; and
- (c) With respect to Cst. U it is also proposed that the Member undertake further training and education with respect to policing in vulnerable communities.

I Overview

- (1) On December 18, 2024 a Discipline Decision rendered found that there was an admitted act of substantiated misconduct with respect to each of the Members as follows:

A disciplinary breach of public trust by way of Discourtesy with respect to the Affected Person, contrary to section 77(3)g of the *Police Act*.
(the “*Substantiated Misconduct*”)

- (2) A second allegation of neglect of duty with respect to each of the Members was not substantiated.
- (3) Matters were adjourned to receive submissions from Counsel to the Members on appropriate disciplinary or corrective measures. Submissions from the Complainant with respect to possible sanctions were received earlier in the process.

- (4) All defined terms in the Discipline Decision apply to this component of the process relating to the Members.

II Legislative Framework:

- (5) 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.

- (6) 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 Members, the Complainant and all relevant law.
- (7) 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

- (8) The key findings of fact relating to the Substantiated Misconduct concerning the Members set out in the Discipline Decision are summarized as follows:
- (a) The first misconduct allegation relates to the actions of the three Members acting in concert to laugh while standing over the handcuffed and prone Affected Person immediately subsequent to her arrest;
 - (b) The Members laughed as alleged in the presence of members of the public;
 - (c) The laughter arose as a result of a shared private joke between newly appointed Members. It was not focused on or related to the circumstances of the Affected Person in any way;
 - (d) The public perception of that laughter easily led members of the public, and the Complainant, to assume that the Members were treating the Affected Person with disrespect; and
 - (e) The Members did not act intentionally to create that perception, however, the public reaction was clearly to the contrary. As such the Substantiated Misconduct by the Members was, in all of the circumstances, reckless.

IV Submissions of the Complainant

- (9) The Complainant provided two sets of extensive submissions with respect to the matters in issue. All of those submissions have been carefully considered and marked as exhibits in these proceedings.
- (10) With respect to the imposition of disciplinary or corrective measures, the Complainant notes in detail the profound effect that this arrest has had on not only the Affected Person, but also those who have witnessed the arrest both in person and while viewing the published video.
- (11) It is the Complainant's thesis that actions such as those substantiated in this proceeding have the potential to significantly reduce respect for officers of the VPD enforcing the law.
- (12) The Complainant supports the imposition of a suspension without pay for all Members.
- (13) With respect to training and education, the Complainant is of the view that the training completed by the Members was ineffective in preparing them to deal with the arrest of an individual such as the Affected Person in the context of downtown eastside issues.
- (14) With respect to the training issue, the Complainant specifically noted at page 41 of her second submission as follows:

"I feel that this cannot be stressed enough. The members require anti-racism and cultural safety courses in addition to retaking crisis intervention, de-escalation, mental illness and disorders courses, because for whatever reason – the lack of the members own ability to empathize or a systemic lack of caring by the VPD to handle a situation peacefully and without violence – the VPD officers failed [the Affected Person], the public witnesses and the community at large.

I would also ask that the VPD review their policies to promote peaceful and de-escalation strategies."

- (15) Finally, the Complainant submits that a fulsome apology must be delivered by both VPD and the Members. It is submitted that the apology be made to both the Affected Person and all those who witnessed the arrest.

V Submissions of Counsel for the Members

Submissions of Counsel for Cst. T

(16) Counsel for Cst. T submits that in the circumstances relevant to that member, advice as to further conduct is fair, fit appropriate disciplinary measure.

(17) Counsel submits that:

- (a) Cst. T was born and raised in [REDACTED], B.C. After graduating from high school in [REDACTED] as a top student, she attended Douglas College and obtained a degree in Criminology in [REDACTED];
- (b) From October 2017 to September 2019 Cst. T worked in a variety of positions as a Community Safety Officer, a Traffic Authority member, a fleet attendant and as Special Municipal Constable in the Vancouver Jail;
- (c) In September 2019 Cst. T was hired and sworn in as a serving member of the VPD. She started working 'on the road' as a patrol officer and a member of the mounted (equine) unit in August 2020 in District 1; and
- (d) Since June 2023, after having competed for the position, Cst. T is now a member of the VPD's "metro team" .

(18) In addressing the factors under section 126 of the Police Act, Counsel for Cst. T submits as follows:

- (a) It is acknowledged that the impact of Cst. T's behaviour on the Affected Person and the public who witnessed the incident or watched the video was concerning;
- (b) It is acknowledged that the Affected Person was a vulnerable person and that the public rightly expects those vulnerabilities to be recognized by police officers and police organizations as they deal with members of the public;
- (c) It is important to recognize, however, that the exchange between the officers was brief and not directly related to the affected Person in any manner, nor were the actions intended to disrespect the Affected Person;
- (d) Cst. T has no prior history of discipline and a strong, positive record of performance reviews as a police officer;
- (e) With the imposition of disciplinary or corrective measures, Cst. T will lose her clear service record which she values immensely. Although the range of penalty contemplated here is on the low end of possible outcomes, it is nevertheless something that will be considered by her employer in assessing applications for promotion and possibly by counsel and the Courts in assessing her credibility;
- (f) Cst. T regrets her conduct and the harm it has caused;
- (g) Cst. T was identified and targeted in the media coverage of this incident. This was highly deterrent for her; the misconduct has not, and will not, be repeated;
- (h) Cst. T has admitted her misconduct and shown genuine remorse and insight into this incident. She understands why she must face consequences under the Act and accepts any penalty imposed in the course of these proceedings; and

- (i) Cst. T had previously navigated a sustained barrage of targeted hateful social media posts for an on-duty incident. Cst. T has since used this very negative experience and assisted other police members to navigate their way through it. Counsel submits that this experience is a material mitigating factor.
- (19) Counsel for Cst. T acknowledges that the Member was aware of the Affected Person's apparent indigenous status, however, it is submitted that the affected Person's vulnerability should not be an additional aggravating factor with respect to the discourtesy misconduct arising in this case.
- (20) It is submitted that there is no evidence that Cst. T was more discourteous because the Affected Person was vulnerable and in fact, the laughing was not directed at Ms. [REDACTED] or even related to the incident.
- (21) Counsel specifically submits that any consideration of the Affected Person's vulnerability should be confined to the analysis under s. 126(2)(a) - the seriousness of the misconduct.
- (22) Counsel submits that when one considers all the circumstances in this case, a reasonable and well-informed member of the public would agree that advice to future conduct is sufficient to satisfy the requirements under the *Act*. This was an isolated and brief incident reflecting a lapse in judgment. There is no pattern of behaviour, nor any record of misconduct, to be concerned about.
- (23) Counsel submits that disciplinary measures should go no further than imposing advice as to future conduct recognizing that In a manner of speaking, the media coverage and resulting public sentiment – both fair and unfair - has soundly reprimanded (and punished) these three Members.

Submissions of Counsel for Cst. U

(24) Counsel for Cst. U submits as follows on the background of Cst. U:

- (a) In October 2017, Cst. U was hired by the VPD as a Special Constable. During his time in that role he worked in three fields – Community Safety Officer, Jail Guard and Traffic Authority;
- (b) In 2018, Cst. U was awarded a Deputy Chief commendation for his efforts in providing first aid to a male overdosing in the Vancouver Jail;
- (c) Cst. U held the role of a Special Constable until 2019, when he was officially hired by the VPD as a Police Constable and moved on to the Justice Institute of BC to start the police academy;
- (d) In August of 2020 Cst. U graduated from the police academy and started working as a patrol officer in District 2. He continues in that role to this day;
- (e) Cst. U has no prior disciplinary record;
- (f) During his career as an officer Cst. U has exceeded expectations. His 2023 performance review includes an extensive list of courses taken. In that review, Cst. U has been assessed as exceeding in all core competencies; and
- (g) It is submitted that Cst. U has had a very successful career to date and made significant contributions to the VPD.

(25) In addressing the factors set out in section 126 of the Police Act, Counsel submits as follows:

- (a) Cst. U, through his admission, has recognized that he committed misconduct. While any form of discourtesy is serious, Cst. U's discourtesy was brief and one more of optics than any sort of intentional discourtesy focused towards the arrested female. Furthermore, it is submitted that the seriousness of the misconduct was at the lower end of the scale;
- (b) Cst. U has been a member for a little more than 5 years. He has no prior discipline record. Though relatively early in his career, Cst. U performance reviews makes clear that he is on a very positive path. He has excellent career prospects. There is every reason to think that he will continue to perform his duties in an honourable fashion. His job performance to date points to the inevitable conclusion that he is of good character and excellent at his job;
- (c) A disciplinary measure limited to advice as to future conduct would be a further step in reinforcing the importance of courtesy at all times for Cst. U, a lesson that appears to have already been sent through this process;
- (d) There is no evidence before this tribunal to suggest that Cst. U is likely to repeat the conduct now that he has been found by this tribunal to have misconducted himself. He has never had any issues with discourtesy and no concerns have arisen in the more than two years since this matter arose. This incident is clearly an outlier in his policing career; and
- (e) Cst. U admitted the discourtesy and has shown through his conduct since this matter arose that there will not be any recurrence.

(26) With respect to the application of legal principles to the facts of this case, Counsel for Cst. U submits that while no two cases are identical and the underlying facts are not always discernible, cases with penalties ranging from advice to future conduct to a written reprimand appear to be quite common for cases of discourtesy. For example, Counsel makes reference to the following decisions arising under the Police Act discipline process under section 126:

(i)OPCC 2021-19723 – advice to future conduct

Inappropriate language while booking someone into cells;

(ii) OPCC 2022-22311 – advice to future conduct

Swearing at a member of the public when asked for his badge number;

(iii) OPCC 2017-14263 – written reprimand

Discourtesy for swearing at an arrestee who was being resistant to signing a form;

(iv) OPCC 2021-19515 – written reprimand

The member's tone was at times sarcastic and lacking in respect.

(v)OPCC 2019-16684 – verbal reprimand

While stopping people for an open alcohol violation, the member was agitated and aggressive and made profane statements ;

(vi) OPCC 2020-17928 – advice to future conduct

Yelling at a cyclist to get back on the sidewalk;

(vii)OPCC 2018-14810 – written reprimand

In the context of ticket checks on Skytrain an officer told someone to shut up, called him an idiot and got very close to his face;

(viii)OPCC 2018-15546 – written reprimand

Profane and disrespectful comments to an arrested person;

(ix)OPCC 2017-14071 – written reprimand

Inappropriate and aggressive conduct towards a lawyer in traffic court; and

(x)OPCC 2017-14071 – written reprimand

The officer spoke to an individual in a discourteous manner

(27) Given the circumstances of this case, Counsel submits that the appropriate penalty is advice to Cst. U as to his future conduct. Specifically it is submitted that a review of previous decisions confirms that this penalty is well within the range of penalty for this sort of misconduct.

(28) Counsel further submits that for an officer with an otherwise unblemished record and reputation, no more than that measure is necessary to ensure that the gravity of this matter is brought home to him.

(29) Finally, Counsel submits that a reasonable member of the public would consider such a disposition appropriate given the isolated nature of the incident, that the laughing was not directed at the arrested female, Cst. U's admission of the discourtesy and his otherwise stellar employment record as an officer. In such circumstances, it is submitted that advice to future conduct is an appropriate, and proportional, response given the totality of the circumstances.

Submissions of Counsel for Cst. D

(30) Counsel for Cst. D also submits that the appropriate disciplinary or corrective measure to be applied to the member on the facts of this case is advice as to future conduct.

(31) Counsel for Cst. D further submits as follows:

- (a) Cst. D is currently ■ years old. He has been a member of the VPD since January 2020;
- (b) Prior to joining the VPD, Cst. D was a duty manager in security screening at the Vancouver International Airport. Cst. D holds a degree in Forensic Investigation from BCIT;
- (c) Cst. D started on patrol for the VPD in October 2020. From the day he started on patrol to the day of the incident, Cst. D was assigned to District 2, which includes the Downtown Eastside;
- (d) On the day of the incident, Cst. D was ■ years old and had been on patrol for approximately 18 months. He was still a relatively junior officer who would have been finding his way in terms of policing a difficult area of Vancouver;
- (e) Cst. D's VPD performance appraisals from 2021-2023 paint a picture of a conscientious, diligent, and respectful police officer. He is the exact type of officer that the public should want to be patrolling our city;

(f) One of the recent performance reviews notes as follows:

[Cst. D] is a diligent, professional and effective patrol officer who understands his role on the squad, in the district and within the VPD. He comes to work every day with a positive attitude and willingness to handle any call or task he is assigned. His reports are

detailed, easy to read and professional. [Cst. D] gets along with everyone on the team and has no problems working with anyone. He is eager to learn new skills and takes any opportunity to build on things he knows and also those he doesn't.

- (g) Cst. D's 2023 performance review assessed him as "exceeding" (the highest assessment available) the expectations in every core competency assessed: coaching, communication, community focus, leadership, problem solving & decision making and resource management; and
- (h) Cst. D has no prior disciplinary record of any kind. Other than this one unfortunate event, he has been a model officer.

(32) Counsel notes that in considering appropriate disciplinary or corrective measures under section 126 of the Police Act, section 126(3) directs that a Discipline Authority must approach this phase of proceeding with a view to correcting and educating the member, unless such an order is either unworkable or would bring the administration of police discipline into disrepute.

(33) Counsel submits that given Cst. D's admission in this matter, combined with his insight about his conduct and its potential impact on the Affected Person and the community, advice as to future conduct is more than adequate to further educate Cst. D and ensure that such misconduct is not repeated. In Counsel's view, such a measure would appropriately meet the criteria set out in section 126 of the Police Act.

(34) In considering the specific factors under section 126, Counsel for Cst. D submits:

- (a) The circumstances giving rise to the act of misconduct was laughter while standing over a recently arrested vulnerable person. Counsel notes that the laughter was not directed to or at the expense of the Affected Person but rather an inappropriate sharing of laughter between colleagues. As such, it is submitted that the laughter while a significant matter, was less serious than other targeted examples of misconduct in other discipline decisions;
- (b) Cst. D has no discipline record, a significant mitigating factor. Furthermore, his performance assessments before, during and after the date of the incident, make it clear that he is an excellent police officer. His performance assessments indicate that he has made significant contributions to the VPD and to the community, while

working in what can fairly be described as a challenging environment in the Downtown Eastside;

- (c) The imposition of a suspension or other more serious disciplinary outcomes may well tarnish Cst. D's long term career prospects unfairly;
- (d) There is no likelihood of further future misconduct by Cst. D. In fact, it is submitted that Cst. D's performance reviews anticipate a highly successful future for Cst. D in service to the community;
- (e) Cst. [REDACTED] admitted his misconduct and showed genuine insight into why his conduct needed to be improved, a significant mitigating factor;
- (f) Counsel notes OPCC decisions 2021-19723, 2022-22311 and 2020-17928 as indicative of support for the argument that advice as to future conduct is the appropriate disciplinary measure on the facts of this case; and
- (g) Counsel also notes that, Cst. D was a relatively inexperienced member of the VPD, having been on the job for less than two years at the time of the incident in question. Counsel does not suggest that junior police officers are subject to a lesser or different standard of professionalism, only that misconduct by a less experienced member is generally seen as less serious than misconduct by a more experienced member or a supervisor. Counsel notes that Cst. D is not asking that significant weight be placed on this on this factor, but respectfully submits that this was a situation where the most important outcome is for all of the respondent officers to learn and understand how their actions will be interpreted by subjects and/or member of the public.

- (35) Counsel for Cst. D therefore submits that the appropriate disciplinary or corrective measure for his admission and the subsequent finding of discourtesy is advice as to future conduct, pursuant to section 126(1)(k) of the *Police Act*.

VI Aggravating and Mitigating Circumstances

- (36) I will now turn an analysis of the relevant factors set out in s. 126(2) of the *Police Act*.

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

- (37) The Substantiated Misconduct for each of the Members relates to actions taken immediately after the arrest of the Affected Person. The actions in issue were laughter by each of the Members while standing over the prone and handcuffed Affected Person in the presence of several members of the public.
- (38) The submissions from the Members urges recognition of the discourtesy as a less serious act of misconduct.

- (39) The Complainant disagrees with that position and asserts strongly the seriousness of the events that took place.
- (40) The Complainant noted in extensive submissions that the actions of the Members were observed by several members of the public. Although not physically present, having reviewed a video of the actions of the Members and other officers, the Complainant submitted that the actions of the Members were disrespectful and insensitive to the Affected Person's issues.
- (41) The Complainant confirmed that in her view, the actions of the Members were, in all of the circumstances, serious acts of misconduct.
- (42) Having considered the evidence, I cannot agree with the submission of Counsel for the Members. Let me explain.
- (43) While the discourtesy of laughing as a group while standing over a handcuffed prone vulnerable indigenous woman is apparent, the seriousness of those actions may not be evident as it was not intended to be disrespectful. The unintended consequence of the laughter resulted in the Complaint giving rise to these proceedings and apparent extensive social media publicity of the Members actions.
- (44) Unfair as that may have been to the Members, the actions of the Members raised a risk of reducing respect for policing, particularly in relation to vulnerable people. The comprehensive and extensive submissions of the Complainant bear witness to the seriousness of the Members actions, at least in the mind of the Complainant.
- (45) It is not unreasonable to infer that similar concerns might have been in the minds of those have seen the Video of the Affected Persons arrest. None of those parties would have had the benefit of hearing from the Members as to their perspective on what took place. Similarly none would have had the benefit of the very positive and constructive submissions of Counsel in relation to the performance of the Members as police officers and the valuable contributions that they have made to the City of Vancouver.
- (46) The seriousness lays in the perception of the public left by the events of April 6, 2022. Best intentions and explanations aside, the Members bear responsibility for having created those negative perceptions with the attendant risk to a loss of respect for policing in general.
- (47) Having reviewed the circumstances relating to the Substantiated Misconduct, I find that:

- (a) The Substantiated Misconduct, while brief in duration, was indeed serious, resulting in a strong negative perception of policing action that was taking place;
- (b) Such misconduct was, however, not intended to disrespect the Affected Person or display casual indifference to that person's circumstances. Rather, I find that the acts of the Members were a mistake in judgment expected of all officers;
- (c) There can be no doubt, however, that such misconduct raises a serious potential to negatively impact respect for the integrity of police actions in the community.

(48) Overall, I am satisfied that the Substantiated Misconduct is a serious matter, and therefore a material aggravating factor.

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

(49) The information made available to these proceedings concerning the Members' record of employment confirms that they had each been engaged as officers for less than three years when the Substantiated Misconduct took place. However, it is clear that the requirement for police to respect basic dignity rights of others does not vary based on the member's age.

(50) Each of the Members has a record of positive and successful performance reviews since beginning service with the VPD.

(51) There is no material in the record of employment for any of the Members relevant to consideration of the Substantiated Misconduct.

(52) Overall, the Members' positive record of employment and performance in their 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))

(53) Implicit in the imposition of any disciplinary or corrective measures under section 126 is some element of impact on the Members and their families.

(54) Counsel for each of the Members has shown that the imposition of discipline measures may also negatively affect future career prospects for each of the officers.

(55) I find that the potential impact of disciplinary or corrective measures could have an impact for the Members in terms of income, benefits and future promotion prospects. A suspension from service without pay may also have significant effects on career development options.

(56) 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 all Members.

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

(57) As noted earlier, each of the Members admitted the Substantiated Misconduct. That is an important factor in considering the likelihood of future misconduct.

(58) The Record does not disclose that any of the Members has any prior substantiated misconduct.

(59) As such, I conclude that there is a low risk of future misconduct on the part of any of the Members.

(60) 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))

(61) I am satisfied that both Cst. T and Cst. D genuinely accept responsibility for the misconduct that has been substantiated. Both also showed insight into the discourtesy issue and circumstances of the Affected Person.

(62) I am fully satisfied that both Members are 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 for both officers.

(63) However, with respect to Cst. U, I do not have the same confidence with respect to his views and commitment. In the Discipline Decision at paragraphs 58 to 60, I commented on Cst. U's evidence as follows:

(58) At the end of Cst. U's testimony in chief, I asked Counsel if the Member wished to specifically address the discourtesy issue. Cst. U's response was strained and while admitting that the laughing reflected poorly on the Members present, did not express regret for the actions taken.

(59)I find that Cst. U was credible in his testimony. However, his lack of candor with respect to the discourtesy issue raises other concerns as to his complete understanding of the misconduct alleged.

(60)His commentary on the discourtesy misconduct allegation was perfunctory, and really limited to admitting misconduct, but confirming that the Affected Person was not the subject of the laughter.

- (64) Counsel for Cst. U submits that the discourtesy that took place was an outlier in an otherwise positive and successful policing career.
- (65) Counsel also submits that Cst. U demonstrated acceptance of responsibility for the alleged misconduct by admitted the same.
- (66) Counsel also submits that there is nothing in the evidence suggesting that the Member may commit further misconduct.
- (67) Finally, Counsel submits that the lack of any further misconduct since the arrest of the Affected Person is cogent evidence that the Member is taking active steps to prevent the reoccurrence of any misconduct.
- (68) With respect, I cannot agree with all of those submissions. The circumstances noted above raise a concern that Cst. U's insight into his misconduct is limited. When given an opportunity in direct examination at the Discipline Proceeding, the Member limited his admission to the bare facts of the alleged discourtesy. When provided an opportunity to address that lack of detail in additional commentary, the Member had nothing material to add. Those responses stand in stark contrast to the evidence of Cst.'s T and D.
- (69) Cst. U's evidence does not provide the foundation for any finding that he fully accepts responsibility for his actions, and has a clear commitment to further significant change in how he might approach similar circumstances in the future.
- (70) I find that Cst. U's lack of insight with respect to this factor is an aggravating factor in considering the misconduct in issue.

(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))

- (71) There is no evidence of any relevant department policies, standing orders, internal procedures or actions of the Members' Supervisor that might have contributed to the acts of misconduct which are the subject of these proceedings.

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

- (72) 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 members dealing with misconduct sanctions in similar circumstances.
- (73) Counsel have provided their submissions with respect the appropriate range of disciplinary or corrective measures. It is the position of all Counsel that an order for advice as to future conduct is the appropriate corrective measure.
- (74) Considering all of the foregoing I conclude that, for similar acts of misconduct by way of discourtesy, the range of principal corrective measures ordered in similar circumstances lays between advice as to future conduct and a letter of reprimand.
- (75) I am also satisfied that although a suspension from service may well be appropriate in some circumstances, the facts of this case as found in the Discipline Decision do not establish the grounds to order a suspension of service for the Members.
- (76) In that regard I note that the evidence at the Discipline Hearing provided important additional information concerning the interaction between the Members and the Affected Person. In particular, I note that:
- (a) The discourtesy in question was unintentional, although the unintended consequences of that discourtesy were significant impacting both the Affected Person and those witnessing the arrest;
 - (b) The act of discourtesy was brief in duration and apparently spontaneous; and
 - (c) The act of discourtesy was not directed at or concerning the Affected Person, although a reasonable person viewing the circumstances from afar might well conclude that such was the case.

(viii) Other Aggravating or Mitigating Factors

- (77) Submissions of Counsel have noted the negative impact on the Members of extensive social media commentary on the arrest of the Affected Person. It is submitted that those facts are relevant as an additional aggravating factor.

(78) I find that it is contextually relevant to consider the fact that the Members have each endured significant negative exposure on social media as the alleged act of discourtesy was widely circulated.

(79) Strong public policing must acknowledge the importance of appropriate challenges to policing actions and decisions as a central element of a democracy. Transparency in scrutinizing policing action is also critically important.

(80) However, personal attacks on individual officers may detract from such oversight and destabilize the confidence of officers attempting to perform their duties.

(81) As such, although I find that social media exposure and criticism is neither an aggravating or mitigating factor in this case, it is a relevant contextual consideration in crafting appropriate disciplinary or corrective measures.

IX Analysis

(82) 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.

(83) Having considered all of the foregoing, including the aggravating and mitigating factors noted above and the evidence adduced during the review process, I am satisfied that the focus of this decision must be to correct and educate the Members. I am also satisfied that doing so would not bring the administration of police discipline into disrepute nor prove to be unworkable.

(84) What took place with the Members was an important lapse in judgment. All Members had just completed the arrest of an uncooperative person brandishing a knife like weapon. Multiple officers were involved in the arrest which was concluded only with the use of a bean bag gun. Clearly tensions were high and some degree of relief must have been felt once the Affected Person was under restraint awaiting transport to cells.

(85) In those circumstances, the Members began sharing a private discussion and laughed for several minutes while standing over the prone Affected Person. Those civilians present, and those observing the video widely circulated, all appear to have reacted strongly, and negatively, to the Member's laughter in such circumstances. The fact that the laughter was not directed at, or relating to, the affected Person was irrelevant and may well have contributed to a reduced respect for policing of vulnerable people such as the Affected Person.

- (86) The misconduct of the Members by way of discourtesy extended not only to the Affected Person, but also to those who viewed the arrest and the video of those events.
- (87) The discourtesy of the Members was therefore serious. However, there are many mitigating facts of relevance with respect to the Members misconduct, including the prior positive performance of all Members as police officer, their admission of the disrespect associated with the act of discourtesy and the very remote likelihood of any further misconduct by these Members.
- (88) The facts of this case have required a careful analysis of not only the FIR and video of the events that took place, but also the testimony of the Members. That evidence was not available to the Complainant when her thoughtful and detailed submissions were made to the Commissioner.
- (89) The Members' testimony provided important context to the video recording of events, confirming that there had in fact been no neglect of duty in ensuring that the Affected Person required no urgent medical care, and further, that an admitted error in judgment had been made in laughing in the circumstances of the arrest that took place.
- (90) The appropriate disciplinary or corrective measure does not include a suspension on the facts of this case, particularly in light of dispositions ordered in similar earlier cases.
- (91) With respect to the submissions of Counsel that advice as to future conduct is the most appropriate outcome, I cannot agree. The seriousness of the proven misconduct does not support such an outcome. The same applies to the option of providing an oral reprimand.
- (92) I am satisfied that corrective measures are the appropriate disciplinary outcome on the facts of this case. The measures outlined below will acknowledge the importance of the misconduct, bring that home to the Members, and provide the Affected Person with acknowledgement of those conclusions.
- (93) I have every confidence that with the proposed corrective outcomes, the Members will continue their careers as positive and constructive officers of the law in a diverse community.

X Conclusion and Orders

- (94) 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) (a)

and 127 of the *Police Act*, proposing that Cst. T and Cst. D each receive the following corrective measures:

- (a) A letter of reprimand referencing the facts of this case; and
- (b) A direction to prepare and deliver a letter of apology to the Affected Person, on terms approved by VPD Professional Services.

- (95) With respect Cst. U, I am proposing the same corrective measures with the addition of a proposal to order that the Member undertake further education and training with respect to the policing of vulnerable persons and communities. I am satisfied that this additional educational requirement is necessary to address what I have found to be a gap in Cst. U's insight into the misconduct that took place. Again, I will defer to VPD Professional Services to choose the appropriate training opportunity provided that the course has a duration of at least a day.
- (96) I recognize that the Investigator was unable to locate the Affected Person during the course of his investigation. My request is that VPD Professional Services make reasonable efforts to locate the Affected Person to deliver the letters of apology.
- (97) I have considered a more far reaching apology as suggested by the Complainant, however, I am not satisfied such is an appropriate order with respect to the Members.
- (98) Issues arising from this incident in the context of the broader community while very important, are a matter for the management of VPD to consider. I respectfully commend such consideration to VPD management.

Brian M. Neal

Brian M. Neal K.C. (rt)
Discipline Authority
Victoria, B.C.
January 22, 2025