

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

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT

AGAINST

CERTAIN OFFICER OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION
PURSUANT TO SECTION 125 of the POLICE ACT

ADJUDICATOR BRENT G. HOY
APPOINTED RETIRED JUDGE
SECTION 117(4)

TO: Constable [REDACTED] (Cst. [REDACTED])
c/o Vancouver Police Department
Professional Standards Department (the "member")

AND TO: Ms. Claire Hatcher (counsel)

AND TO: Sergeant [REDACTED] (Investigator)
c/o Metro Vancouver Transit Police

AND TO: Inspector [REDACTED]
c/o Vancouver Police Department
Professional Standards Department

AND TO: Mr. Frank Chong
Chair, c/o Vancouver Police Board

AND TO: Mr. Prabhu Rajan
Police Complaint Commissioner (Commissioner)

DECISION SUMMARY

1. This decision considers whether the member had neglected his duty to ensure the well-being of the affected person with appropriate medical assistance who was intoxicated and later died while in police detention on [REDACTED].

2. Pursuant to Section 117(4) of the Police Act issued on July 16, 2024 by the Police Complaint Commissioner, I was appointed as Adjudicator concerning allegations of misconduct by Constable [REDACTED].

3. As a death had occurred, the mandatory section 89 investigation pursuant to the Police Act was suspended until the Independent Investigation Office of BC (IIO) completed their review. On August 2, 2023 the IIO concluded there were no criminal charges. The OPCC resumed its duties on September 1, 2023. Sergeant [REDACTED] of the Metro Vancouver Transit Police was the Investigator for the Final Investigation Report (FIR) and submitted his Report to Inspector [REDACTED] (Discipline Authority). She identified one allegation of Neglect of Duty pursuant to section 77(3)(m)(ii) which she found was unsubstantiated.

4. The Commissioner was of the view this was incorrect.

5. I had made my preliminary finding that the allegation appeared sufficient to substantiate misconduct on August 21, 2024. On December 3, 2024 a hearing was

held and evidence heard. Counsel filed her submissions on January 31, 2025, and supplemental submissions were made February 5 & 10, 2025.

6. After the final Discipline Proceeding Hearing of the matter and upon weighing the whole of the evidence as contained in the FIR, the member's trial evidence and submissions, I have concluded, on the balance of probabilities, that the allegation of "Neglect of Duty," without "good or sufficient cause," in failing to "promptly and diligently" follow his duty to ensure the well-being and protection of the affected person with appropriate medical assistance, contrary to section 77(3)(m)(ii) of the Police Act has been substantiated. In brief summary the following is noted:

a. The affected person's 911 call of thoughts of self-harm brought Cst [REDACTED] to her residence for a wellness check at about 0800 hours. The officer learned she had a night of drinking and she was an alcoholic. After determining she was interacting without difficulty and was sober, at 0820 she was taken into custody for the purposes of fingerprinting and release on an outstanding endorsed warrant. After a 15 minute drive to VPD Cambie arriving at 0835, the affected person exhibited significant signs of impairment. They were unable to complete her release as the booking desk was closed. She was next taken to VPD Jail leaving at 0840. He had ongoing concerns for her health and well-being and decided, given his past experience having worked at VPD Jail that nursing assessment would be available. Upon arrival about 10 minutes later at 0850 the affected person exhibited extreme signs of impairment. The officer stated he had informed the Jail staff of her intoxicated state. She was taken into the Jail by the staff at 0856.

b. Discussed is the officer's decision making process and his assumptions. Furthermore, examined and weighed is the affected person's rapid decline in her health. Noted is a failure to ensure the Jail staff were clearly informed of her poor health status plus the need for a nurse assessment. His lapse of duty is more than a mere performance issue.

c. The facts are objectively weighed from the standard of a reasonably prudent officer with similar training, knowledge, skills and experience in similar circumstances prevailing at the time. The officer failed to perform

his duties “promptly and diligently” contrary to the Police Act and did so without “good and sufficient cause.”

d. The application of “serious blameworthy conduct” as a residual evaluation narrows the range of culpable conduct as it brings a subjective analysis of intention amounting to conduct reflecting wilfulness, deliberateness or recklessness as the only type of conduct capable of censure. This is not within the legislative language of section 77(3)(m)(ii) of the Police Act which is an objective analysis of “without good or sufficient cause” which is a much broader assessment of circumstances potentially amounting to neglect of duty.

MISCONDUCT – THE POLICE ACT – NEGLECT OF DUTY

7. The provisions of Section 77 which are applicable are as follows:

Defining misconduct

77(1) In this Part “misconduct” means

(b) conduct that constitutes

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

(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:

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

(ii) promptly and diligently do anything that it is one’s duty as a member to do

8. Section 77(4) qualifies a misconduct assessment with these words:

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.

VPD POLICY

1.4 ARREST & DETENTION

9. Relevant in this review is the Policy and Procedure of the VPD. It addresses what the duties of a police officer are when a person is in custody with injuries or other medical risks. It states this:

1.4.6. Arrest of Persons with Injuries or Other Apparent Medical Risks

POLICY

People in police custody are vulnerable, and entirely dependent on the police to obtain medical assistance for them. Members are responsible for the well-being and protection of people in their custody, and must ensure that a person in custody receives appropriate medical assistance.

PROCEDURE

1. If a member believes a person in custody is in need of medical assessment or treatment, the member must request the attendance of BC Ambulance Service (BCAS), Vancouver Fire and Rescue Services (VFRS) or other medical professionals; and
2. Ensure the person in custody is transported to hospital if they
 - c. are suspected to have ingested anything that may cause a medical emergency and/or overdose; or
 - d. are incapable of making a rational decision with respect to medical treatment due to intoxication, mental health issue, and/or other medical condition such as a head injury (see RPM Section 1.2.2 Use of Force to Provide Medical Aid);

8. Members should indicate on the Jail Arrest Report if a person in custody required medical attention prior to arrival at jail.

1.2.2 Use of Force to Provide Medical Aid

POLICY

Injured or sick persons have the right to refuse medical aid, However, in order to do so they must be capable of making a competent, rational decision. In assessing whether someone is capable of making a rational decision, members must pay particular attention to the person's degree of impairment and ability to communicate, and not rely excessively on the person's ability to follow simple commands. If a person refuses medical care, and is capable of making a rational decision, members must make careful notes of the refusal and , where practicable, have the refusal witnessed.

PROCEDURE

2. The use of force to provide medical aid shall only be used as a last resort, with extreme restraint and only when either:

b. a member reasonably believes that a person is incapable of making a rational decision about whether to accept or refuse medical treatment, as a result of extreme intoxication, mental illness, or some other physical or mental condition, the member shall take reasonable steps to ensure that emergency medical treatment can be administered. In this situation the person may be forcibly taken to hospital via ambulance and members may assist hospital staff if necessary in restraining the person so that emergency medical treatment can be administered.

THE EVIDENCE

10. Cst ■ is ■ years old and was hired by the VPD in ■ Prior to that he worked in the Vancouver Jail for ■ part time as a guard. He now has about

■ years of service with VPD. After the IIO completed their investigation, pursuant to the Police Act, Cst ■ gave his statement on February 21, 2024.

11. On ■, the affected person, ■, was ■ years old and resided at a single room occupancy (SRO) on ■.

12. **0742 hours – call to 911.** She called 911 and related that her sister had just died and had thoughts of jumping off the Cambie Bridge. She further commented she had once been addicted to drugs and was now an alcoholic.

13. **0748 hours – officers dispatched.** Responding officers were Cst ■ along with his recruit Cst ■ who had been on the job for ■. They were within 30 seconds of the address and attended for a wellness check and to determine whether the Mental Health Act should be implemented. They were also informed there was an outstanding endorsed warrant.

14. ■, a support worker for the SRO met the officers and escorted them to the affected person's room. She had known her for the past 1.5 years, that she was an alcoholic and had a past history of drug use. On meeting her she observed the affected person did not appear intoxicated and was happy. She noted her laughter as the officer raised the topic of her being suicidal and jumping off a bridge. The witness observed that the officers were interacting in a caring manner. As she left the building she observed the affected person still had a happy demeanor as she walked out of the building.

15. **0815 hours – arrest outstanding endorsed warrant.** In Cst ■ assessment the affected person did not meet the requirements of the Mental Health Act but the outstanding endorsed warrant was to be executed which was due to a missed court appearance date. As she required fingerprinting his intention was a release at the Cambie Street Station as it was a quicker process rather than the Cordova Street Jail.

16. Two other officers had also attended the SRO. He asked Cst ■ to conduct a search of the affected person before departure. After a change of some of her clothing the affected person wanted to clean her teeth and was accompanied by the officer for that purpose. She then requested drinking some juice which the officer smelt prior to her consumption but no alcohol was detected. She made a

comment she had been drinking all evening. The officer did not note any cans or bottles of alcohol in her room.

17. From Cst [REDACTED] statement on June 2, 2021, he observed that the affected person was clean and orderly in her appearance as was her room. She had also expressed to him she had been drinking all night. He thought she said vodka. No alcohol bottles or drugs were seen in her room. He was unable to note any odour of alcohol observing however he was also wearing a mask. She did not appear intoxicated. She walked without difficulty, there was no slurred speech. After walking down a few flights of stairs and exiting the building she was placed into handcuffs positioned to the front of her body and put into the rear seat of the police vehicle.

18. **Video – [REDACTED]**. The security recordings of the [REDACTED] building shows the affected person walking on her own confidently and without assistance through the hallway. In the stairwell she is observed holding onto the rail with both hands. In another CCTV video of a different stairwell, she descends while holding onto the right rail. Throughout her balance was sure and gait was steady. There were no balance or mobility difficulties.

19. **0820 hours – departure from [REDACTED]**. As they travelled to VPD Cambie Cst [REDACTED] observed the affected person was snoring and mumbling, as if talking in her sleep.

20. **0830 hours – Covid Form.** The Covid Form is recorded as having been completed at 0830 hours by Cst [REDACTED]

21. **0835 hours – arrival at VPD 2120 Cambie Street.** On arrival she had to be awoken from her sleep and was helped out of the police car. She was not standing up and had slurred speech. Cst [REDACTED] recalls Cst [REDACTED] had asked if she had taken any drugs or alcohol which she responded in the negative. The officers took hold of her under her armpits as they helped her up the steps into the building. Cst [REDACTED] notes “she appeared fine, but just like a drunk person”. She was also complaining about injuries to her knees and were in rough shape.

22. **Video – VPD Cambie.** From the security images at VPD Cambie Street the affected person can be seen requiring some assistance from both officers as she

ascends the steps. She appears unsteady on her feet and balance. She walks unsupported into the lobby but was seen to be slightly unsteady and takes a seat. There seems to be some conversation occurring between the affected person and Cst ■

23. Cst ■ noted she had become lethargic and less coherent. She needed assistance into the building. He questioned her if she had taken drugs or was on medication or anything else which he should be alert to for her medical well-being to which she responded negatively. From his statement he stated he knew she had been drinking but was not aware of the quantity. He also knew she was a recovering alcoholic. He thought that as she had been up all night and drinking its combination was causing her to be more “out of it.” He adds that given the conversation they had at her residence he had no reason to disbelieve her responses.

24. Elaborating on his assessment and thus his decision to go to VPD Jail are these words from line 99 – 110 of his statement:

Um, going back to at 2120, when, when I was making that assessment um, you know, I knew, had there been something that would've, she would've admitted to would've obviously been making choices of either calling EHS or, or figuring out if our, you know, sergeant approval to transport her to the hospital, but I also know from the jail um, working at the jail for about 6 months prior to , prior to being hired, and then just from my experience working as a wagon driver and bringing people that are intoxicated and stuff into the jail, that they have a nurse on staff 24 hours a day. Um, that nurse will come out and, specifically with people who show signs of intoxication, will make an assessment. Um, I knew that that would be a timely thing and that that would um, the nurse who has better medical knowledge than myself would have any concerns, they would've called for an ambulance and, and would've made sure that that transport would've been done uh pretty quickly. So um, but yeah, we ... When we were at the jail we handed her off to the jail staff and she got wheeled in, in a wheelchair, and that was, that was it.

25. Further in his statement as Cst ■ again discussed his decisions at line 261 – 271:

Cst ■ *So part of that assessment um, that I did at 2120 prior to driving to the jail was the fact that she had shown a change in kind of behaviour.*

Sgt ■ *Mmhmmm.*

Cst ■ *Um, as far as her, like coherence and stuff. And I knew, again, because of my experience there, that there was the nurse so I knew that she would be um, assessed quickly by somebody who had medical training and stuff um, to see if there was anything more concerning than just her level of intoxication or fatigue.*

Sgt ■ *Mmhmm.*

Cst ■ *Don't know if that answers that.*

Sgt ■ *Yeah, Uh, no, basically just ...*

Cst ■ *It was a, it was a quick way for her to be brought before somebody with that kind of medical training than waiting an unknown amount of time for a paramedic or transport her to the hospital and waiting how long for her to be assessed there as well, I figured it was , was a quick ...*

Sgt ■ *(overtalking)*

Cst ■ *... to get her to the jail and assessed.*

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26. From Cst ■ trial evidence concerning his decision making process he notes her deterioration and explains that if she had acknowledged consuming anything other than alcohol this might have alerted him to some other causation of her deteriorating state and he would have had her assessed. However, this was not pursued restating the evidence from the FIR, that he had no reason to disbelieve her responses that it was anything other than alcohol causing her intoxication.

27. Unbeknownst to Cst [REDACTED] the fingerprinting desk at VPD Cambie was closed as it was a Saturday. From his trial evidence, the officer stated he had informed the affected person that the reason they went to Cambie VPD was to expedite fingerprinting and shorten her custody time for release purposes. However, as the fingerprint desk was closed they would be required to go to the Cordova Jail for that purpose.

28. At page 48 line 15 to page 49 line 11 of the transcript from trial these words are noted:

A Yeah, so being an endorsed warrant we were trying to facilitate a shortened custody. So getting her fingerprints done and giving her a new court date and at the time we were still doing fingerprints at 2120, but upon arrival realizing its Saturday, we don't do fingerprints on the weekend, which would require us obviously to go to the jail.

Q Okay, did you communicate those things to Ms. [REDACTED]

A Yes, I did.

Q Okay. Do you recall her responding to that in any way?

A I don't remember specific words.

Q Did you ever have the impression that Ms. [REDACTED] had sort of stopped listening to you or stopped responding to you?

A No.

Q Okay. Did you recall Ms. [REDACTED] being irrational at any point in your dealings with her?

A Sorry, irrational?

Q Irrational.

A No.

29. Cst [REDACTED] observes that while explaining why she was to be transported to VPD Cordova Jail she sat slouched in a chair and responded with "mmm" and nodded. When asked to stand she was unable to do so on her own and required assistance. As she descended the steps from VPD Cambie, each officer held her arms.

30. **0840 hours – approximate departure time from VPD 2120 Cambie Street.** Enroute to VPD Cordova Jail the affected person fell asleep and was snoring.

31. **0850 hours – arrival at VPD Cordova Street Jail sally port.** On arrival at the Cordova Jail Cst [REDACTED] notes from his trial evidence that her intoxication level was significantly higher. He adds however there was nothing that would have alerted him to some medical condition.

32. As she was unresponsive to verbal requests to wake up Cst [REDACTED] applied a pressure point technique to awaken her. The officer noted from experience it is not unusual for intoxicated persons to fall asleep enroute to the jail. He adds her intoxication level was more prevalent when they got to the jail. From his trial evidence, he has a depth of experience dealing with those who are intoxicated. Noting what he observed of the rapid change in the affected person's sobriety, given that she was a recovering alcoholic and having been drinking vodka throughout the night, it is not uncommon for one to show more signs of intoxication as the body metabolizes the alcohol. From sober minded to drunken stupor.

33. From Cst [REDACTED] statement upon arrival at the sally port of the Cordova Jail, the affected person's condition had deteriorated. She was unable to manage steps. She was placed up against a wall in the administrative area where she was held in an upright position until a wheelchair was obtained and then taken into the jail. He noted confusion was expressed about her changed condition from a sober to intoxicated state. He relates that Cst [REDACTED] explained to him that the jail nurse should check her for detention or hospitalization also noting that the jail staff should notify the nurse. Cst [REDACTED] said this was a jail staff process.

34. From Cst [REDACTED] interview he stated that in other circumstances she would normally be placed in the pre-hold upon arrival at the jail but due to her condition

he decided to liaise with jail staff to bring her straight in for a search and processing. These words are from his interview at line 298 – 320:

Sgt [REDACTED] Right. Okay. So I think you've already answered this one. So when you got to the sally port um, you kind of let them know through the intercom uh, that you felt that she shouldn't be put in the pre-hold and ... Did you ask for them to come out to help (overtalking)...

Cst [REDACTED] I was ... So yeah, that would've been the, the second time um, when I went ... We had originally brought her out and we were using the wand and stuff uh, just due to her inability to stand. That's, that's why I went back to the intercom to just let them know, like, "Hey, she's, she's too intoxicated to, like put into the pre-hold," so ...

Sgt [REDACTED] Right. Okay.

Cst [REDACTED] ... like getting, if they could facilitate just bringing her in and immediately rather than having that extra step, it would just be probably a better ...

Sgt [REDACTED] Mmhmmm ... and did you ... I mean this is quite a while ago, but do you recall any sort of conversation or verbal dialogue you had with the jail staff who came out to assist you about her or the reason she was there?

Cst [REDACTED] I just said sh ... From ... All I remember – I don't remember the specific words ...

Sgt [REDACTED] Mmhmm

Cst [REDACTED] ...but just that she had an endorsed warrant but she is intoxicated so it would be good to get her before a nurse (overtalking) ...

Sgt [REDACTED] Okay. So you had some ...

Cst [REDACTED] ... something...

Sgt [REDACTED] ...sort of comment...

Cst [REDACTED] ...along those lines.

Sgt [REDACTED] ...to that effect.

Cst [REDACTED] Verbally yeah.

35. In Cst [REDACTED] trial evidence, he describes what happened when they arrived at the sally port at page 53, line 21 to page 54, line 22:

A Kind of brought her out of the cage car, walked her over to where we would do our secondary search, which involves searching the person again and wandung them for any metal foreign objects. At that point noticed her ability to stand on her own was difficult, we had her lean against the wall to kind of help support her up.

At that point I used an intercom to relay with the jail staff that we had a female who was intoxicated but had a warrant and just due to her needing assistance from us and rather than putting her in the pre-hold and likely having to lay her down or have her sit it was easier to have the jail staff just come out if they had the ability, if they weren't too busy and just bring her straight in for kind of processing.

Q Okay. Do you have any recollection of communicating to anyone in the jail that she should – Ms [REDACTED] should see a nurse?

A There was a male and a female jail guard that came out. I do recall kind of helping put Ms. [REDACTED] onto the wheelchair and telling them that it was important or it was – it would be a good idea to get her assessed by a nurse.

Q Okay. Do you recall any response to that?

A I don't respond – I don't recall a specific response, no.

36. Referring to his experience as a former jail guard and wagon driver Cst ■ describes that if a person is brought in custody to Jail as a SIPP (State of Intoxication in a Public Place) or a BOP (Breach of the Peace – by intoxication) the protocol and practise is that the jail sergeant, along with some jail guards and one of the nurses would do an assessment while the person remained in the wagon to determine the level of intoxication.

37. On the other hand, if, as was the case for the affected person, one was brought in due to a warrant and was intoxicated, Cst ■ did not expect the same type of response from the Jail staff in the sally port. He nonetheless would have expected an assessment to be done by a nurse for any intoxicated person who was brought in. He added that even if the person was not intoxicated they would still have the opportunity to sit down with a nurse.

38. **Video – VPD Cordova Jail Sally Port.** The security video shows the affected person being helped out of the vehicle and required both officers for support as they moved her to the search area. She appeared unable to stand. The video also notes she required the support of the officers against a wall until a wheelchair was brought for her. As well Cst ■ can be seen to use an intercom and as he explained - to communicate with the jail.

39. **0856 hours – arrival time of jail guards – wheelchair assistance.** While the jail guards were placing the affected person into the wheel chair with the assistance of the officers, Cst ■ states it was then he had a discussion with them about having her assessed by a nurse.

40. **Jail Arrest Form.** This Form is usually prepared by the arresting officer. However, beyond his badge number appearing at the “arrest and transport” box of the Form, Cst ■ does not recall writing and denies completing the Form. From his statement he denies it is his handwriting under that portion of the Form entitled “Circumstances of Arrest” which states “accused had difficult night - called EHS, - Has Warrant.” Sgt ■ investigation of the CAD call and 911 audio notes a lack of any confirming evidence that the affected person had called EHS. She had however called 911 with regard to thoughts of suicide. Furthermore, the officer is unable to explain why, under “Medical Remarks” of the Form, there is a lack of a check mark against “impaired by alcohol.” Of this evidence he expressed at trial the possibility of an oversight on his part.

41. As to how this Form had become part of the jail file record he acknowledges the prospect that either himself or Cst [REDACTED] would have taken the Form into the jail but he has no independent recollection of completing it. The video recordings available does not add clarity to this point.

42. **0858 hours Cst returns to his vehicle with Jail Arrest Form.** The video recording of the sally port shows Cst [REDACTED] retrieve a document from a desk and return to his vehicle with the item in hand. Admission by counsel acknowledges this is the Jail Arrest Form. In the usual course of events Cst [REDACTED] notes the Form would typically be completed while in his police vehicle as it is there that he has access to his computer and personal details of the affected person through Prime but he does not recall doing so in this instance. The video recording of the sally port ends shortly after the officer enters his vehicle with the form.

43. While noting the above lack of recall, Cst [REDACTED] response to Sgt [REDACTED] question of why he did not make mention of the original suicidal call on the Jail Form or to the jail staff he said he would have if he had a concern, but he didn't.

44. **CAD Communication.** Part of the narrative includes communication recorded on CAD that says this, "Has a couple of pills." Cst [REDACTED] noted that he did not recall reading or hearing this over the radio prior to arriving on scene and entering the building. The Investigator remarks upon comparing the time lines of the radio broadcast to CAD this communication seems not to have been noted by the officers and may have occurred as the officers were in the process of exiting their vehicle upon attendance at the affected person's residence.

45. **Special Municipal Cst (SMC) [REDACTED] - jail guard.** On [REDACTED] SMC [REDACTED] function at VPD Cordova Jail was to book people into the jail on the intake form. From her statement of 2024/03/06 she recalls these words at line 58 – 60 in relation to the affected person's initial arrival:

Cst [REDACTED] ... entity. Um, I re-, vaguely remember someone asking like, "Hey, two members are bringing in somebody. Can someone go and help them? And I was like, "Yeah. I'm free." So I remember going out ...

She then observed the affected person's inability to walk properly and utilized a wheelchair. After she was placed into a wheelchair she was wheeled into the jail reception area by her and a male guard. A search was conducted after she had been removed from the wheelchair and placed on the ground by [REDACTED] and SMC [REDACTED] and [REDACTED] [REDACTED] asked the affected person her name, if she was on drugs or if she had taken any drugs which would cause an overdose to which she replied "No. I don't do drugs. Nothing." [REDACTED] further stated while having asked these questions concerning drug use, it is one that she asks everyone. Furthermore, she had not formed an opinion of intoxication.

49. From the IIO statement and her subsequent interview of 2024/03/06 SMC [REDACTED] had seen the jail nurse in the booking area and asked if she would take a look at the affected person. These words are noted at line 170 – 172:

Cst [REDACTED] So I remember talking to the jail nurse and saying: "Hey, can you just go check on her?" and then she asked me if she was conscious and breathing, I said yeah she was, and she said, "Okay, I'll check her, like on my rounds." In my memory, it happened in the official booking area ...

Sgt [REDACTED] Mmhmmm.

Cst [REDACTED] ... and in the video there was a nurse that walks past while we're dealing with her.

Sgt [REDACTED] Yup.

Cst [REDACTED] So it might've been after that, but in my memory I do remember speaking to the nurse at some point.

50. SMC [REDACTED] noted different procedures for detainees depending on their custodial status. If one has been arrested for a breach of the peace (BOP) or intoxicated in a public place (SIPP), the NCO/Sgt and nurse are informed and they both go to the sally port to see if the person is fit to be brought into custody. If the person is coming in on charges or a warrant, they would be detained and the NCO would not be informed. She also relates she was unaware of the affected person's custodial status and had not seen the Jail Release Form until it was shown to her by Sgt [REDACTED] during her interview of 2024/03/06 which

recorded she was there on a warrant. When asked whether the person's custodial status is determined prior to being brought into the jail, she stated it is not checked unless it was a SIPP or BOP. A warrant status, whether endorsed or unendorsed, is reviewed later by the NCO.

51. SMC [REDACTED] describes that after the affected person was searched she was placed in the "mental health cell" as that was the only one available.

52. From the interview of 2024/03/06 SMC [REDACTED] also acknowledged, upon review of the video, that there was a conversation between the officers and herself but she has no recollection of its content.

53. As for the Jail Arrest Form SMC [REDACTED] notes it is the responsibility of the officer to complete it.

54. **Special Municipal Cst (SMC) [REDACTED] – Acting Supervisor VPD Jail.** She became aware of the affected person about 0900 hours noting she appeared intoxicated. She assisted [REDACTED] in the jail reception area while the affected person was in the wheelchair. She was the one who assigned the affected person to cell 153 which is used for those with mental health issues or others who require closer attention. It has a mattress on the ground and is closest to the hall staff counter area. It is viewed as the best location for those with safety concerns. She would be checked by staff every 15 minutes and a nurse once per hour with observations recorded on a log. Nothing untoward was noted until the nurse check at about noon.

55. From her interview of 2024/04/23 she noted in the past couple of years there has been a change in procedure. All persons brought into the jail are taken to a nurse as soon as they are searched. This was not the case in 2021. Rather, the process would involve an immediate assessment by a nurse if the person was intoxicated and brought in as a SIPP or BOP. For others on charges or a warrant and after the person had been searched, it is a cell check by a nurse. This is done by observations and if a closer examination is required then the nurse can request the cell to be opened or request the person may be brought to them for assessment.

56. SMC [REDACTED] felt that the affected person was a standard booking of an intoxicated person. There was no interaction with the officers who brought the affected person to the jail and she had no indication there were any special medical issues beyond intoxication. Her response is somewhat equivocal as to whether anything would have been done differently if the Jail Arrest Form had been completed with the fields noting possible suicide or intoxication had been checked off.

57. **Nursing Manager** [REDACTED] She was working that day with nurse [REDACTED]. She was aware of the arrival of the affected person but neither she nor [REDACTED] went to her. She noted that if a prisoner arrives on warrants or charges the nursing staff do not go to them. Having stated this she did observe her to be alert enough to sit in her wheelchair and could be heard yelling. She adds that usually nursing staff would go out to a person if they are in custody for a breach or severely intoxicated but this is not a consistent practise commenting that usually, they are searched first, allowed access to counsel and then brought to the nurse. She added that if the staff felt something was wrong they would be taken to the nurse first. The nurses do their checks every hour. [REDACTED] did the first one at 10am and noted her sleeping and lightly snoring. At 11am [REDACTED] check found she was still sleeping and lightly snoring. Observations during the noon check by [REDACTED] noted she was not breathing and appeared pale blue. The cell door was opened by the guard for the nurse's access and finding no pulse, life saving measures were engaged but she died. She was pronounced dead at 1249 hours.

58. **Nurse** [REDACTED] She stated that the affected person was not assessed upon her initial arrival in custody. She noted that usually if a person is placed in the drunk tank due to intoxication the nurse will carry out an assessment. However, she advises that they were not informed of her being brought into custody.

59. **Sergeant** [REDACTED] Sgt [REDACTED] is the jail NCO. He noted the procedure when prisoners are brought in as a SIPP or BOP requiring a sally port assessment by a nurse as opposed to those who are in for criminal charges or a warrant as was the case for the affected person. At line 89 – 94 of his interview on 2024/04/09 these words are noted:

Sgt [REDACTED] Um, and I do recall that I thought that it was odd if this was a um, if this was a SIPP arrest um – because Miss [REDACTED] was displaying signs of intoxication – if this was a SIPP arrest, why had I not been ...

Sgt [REDACTED] mmm.

Sgt [REDACTED] ... why was there not a sally port uh, assessment. Uh, and at uh, I suppose at some point I learned that it, in fact was uh, that there were new criminal charges, so um, that's why I had not done an assessment. So my role was not uh, for the assessment purposes because as I learned, she's there for criminal charges and uh, must go before uh ... or ... or a warrant ...

60. As this was not a SIPP or BOP, it was his expectation that if one displayed some medical need or distress the person would either be taken to the nurse or she would be alerted. He further noted there is a policy of regular checks. He observed it did not appear to him that the affected person was in medical distress but she was heavily intoxicated. It was his view that:

“ ... the nurse would, as soon as practicable, check her.” (line 153 Sgt [REDACTED] interview 2024/04/090)

61. Sergeant [REDACTED] interview by the IIO on 2023/05/06 notes his assumption that the records clerk would have been notified about the affected person's presence and it would have been her role to have her medically examined.

62. Furthermore, the Sergeant observes as she was in custody on an endorsed warrant she would not be released until she was sober enough to understand the terms of her release and undertake the fingerprinting process.

63. **Autopsy Report.** An autopsy report by the coroner says the cause of death was complications of cirrhosis of the liver plus combined prescription drug and alcohol intoxication. The Doctor observed that even if she had more timely medical intervention in an ER hospital setting there is no certainty whether she would have been saved from death given the sudden cardiac arrhythmia and respiratory depression due to her complex long-standing chronic and severe liver disease plus alcohol intoxication and prescription drug use.

64. This report also included a response from a question posed by the IIO which asked this question (FIR p. 97):

“Whether [REDACTED] would have survived if she had received medical intervention when the decline in her condition was first apparent, or at any of the checkpoints along the way.”

The Doctor responded while medical intervention may have assisted if her condition had been detected earlier, she adds given the information provided of a decline of her condition as unsteady on her feet but being able to converse, which she ascribes as a nonspecific finding, is akin to one recovering from a night of alcohol consumption. With this type of history it would not alert one to conclude the affected person was in a critical or life threatening situation, or as the doctor stated, “in extremis.” It is “Only with knowledge of hindsight plus autopsy findings” can one understand “she was going to suffer from a sudden and unexpected death.”

THE LAW – NEGLIGENCE OF DUTY SECTION 77(3)(m)(ii)

65. Section 77(3)(m)(ii) of the Police Act defines neglect of duty as:

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

(ii) promptly and diligently do anything that it is one’s duty as a member to do

66. It is instructive to be mindful of the decision of PCC Lowe, OPCC 2011-6912 where he discusses the change of the “mental intent” element from the amendments made to the Police Act in 2010. It removed the subjective analysis of intentional conduct which flowed from the former legislative language, “without lawful excuse”. Instead the legislative change focuses upon an objective standard of reasonableness by the use of the words “without good or sufficient cause.”

67. Whether the breach in question amounts to neglect of duty requires the application of what the objective standard of reasonableness might be as there

are a multitude of officer performance circumstances that may attract analysis. Both advertent and inadvertent conduct can result in findings of negligence but it is to be determined on the yardstick of objective reasonableness.

68. Counsel referred to a number of Ontario decisions for general principles of misconduct. From **Hawkes v McNeilly**, 2016 ONSC 6402 the court noted the conduct being considered must include an element of “willfulness” or “a degree of neglect” changing the character of the misconduct from a “mere performance consideration to a matter of misconduct.” In **Gottschalk v. Toronto Police Service** 2004 CanLII 85796, there must be a degree of blameworthiness rather than a mere mistake. To similar effect is **PG v Police Complaints Commissioner**, (1996) 90 OAC 103 (DC) where the court ruled, without deciding the legal test, that an honest mistake amounting to inadvertence is a “lawful excuse” and thus there is no foundation to make a finding of neglect of duty. From **Korchinski v Office of the Independent Police Review Director** 2022 ONSC 6074 the test for neglect as noted in **Hawkes v McNeilly** (supra) is repeated and adds the need for some evidence of deliberateness or recklessness or some meaningful level of moral culpability in determining if there is neglect.

69. Noteworthy the Police Service Act of Ontario is distinctly different from British Columbia’s Police Act. It defines what constitutes neglect of duty with these words:

2(1) Any chief of police or other police officer commits misconduct if he or she engages in,

(c) neglect of duty, in that he or she,

(i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force.

70. The binding effect of these decisions should be treated with care. The Ontario legislative language imports the subjective assessment “without lawful excuse” whereas the Police Act of British Columbia only contains an objective assessment of reasonableness, “without good or sufficient cause.”. That is, the conduct under consideration is evaluated from an objective standard of care of a reasonable officer in similar circumstances. As will be discussed in **Bergen v**

Guilker, 2015 BCCA 283, the spectrum of culpable negligent conduct is much broader as opposed to decisions such as **Korchinski** (supra) which narrows the assessment to conduct which is “deliberate or reckless” or has some “meaningful level of moral culpability” or from **Hawkes** (supra) which points to “wilfulness” as another element establishing neglect. From **PG** (supra) an evaluation based on an honest but mistaken belief resulting in inadvertence raises a “lawful excuse” but the court did not address the question of whether there was neglect. These decisions provide Ontario examples of neglect of duty but they are not definitive of the potential range of the different types of neglect that may attract culpable conduct. They are examples of a rigorous test involving a subjective analysis which is different in substance and purpose from the Police Act of British Columbia.

71. From a fundamental level of what might amount to neglect OPCC 2023-23655, Adjudicator Oppal addressed the nature of “neglect of duty” and referenced an earlier decision of his in OPCC 2022-22059 at paragraph 20 with these words:

The misconduct of “neglect of duty” is by definition a failure to pay attention, remain alert, and discharge one’s duties. Intention is not a necessary ingredient of neglect of duty. Whether an officer’s actions constitute neglect of duty does not require a deliberate or intentional act. It may be inadvertent. It may involve the failure to pay attention or a disregard to the circumstances.

72. There are a multitude of acts which might be characterized as negligent but it is through the lens of the objective standard of care of a reasonable officer in similar circumstances which gives clarity to this assessment. Counsel quoted the decision of **Bergen v Guilke** (supra) which defines what the standard of care for the police in a civil law setting and how the question of neglect should be evaluated. The decision is equally applicable to neglect of duty under the Police Act. Obviously at one end of the scale is conduct amounting to deliberateness or recklessness but the analysis does not end there for there are numerous other types of conduct which falls below that end of the scale but can still amount to neglect of duty. It does not have to be one that demonstrates deliberateness or recklessness or requiring an element of wilfulness. Rather a failure to perform his duties “promptly and diligently” contrary to the Police Act is considered

contextual to the circumstances at the time and objectively weighed from the perspective of a reasonable officer in similar circumstances in determining whether or not he carried out his duties “without good or sufficient cause.” These words are noted from the decision:

The Content of the Standard of Care

[106] The general rule in negligence cases is that the standard of care is that of the reasonable person in similar circumstances (*Hill* at para. 69). However, in the context of professionals, this rule is qualified by an additional principle: where the defendant has special skills and experience, the defendant must “live up to the standards possessed by persons of reasonable skill and experience in that calling” (*Hill* at para. 69). It follows that, with respect to police officers, the determination of whether the conduct of a police officer was negligent turns on whether his or her conduct, when examined from the viewpoint of a police officer possessed of reasonable skill and experience, was reasonable in the particular circumstances. This standard was articulated in *Hill* as follows:

[73] ... [T]he appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing Court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made -- circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results (Klar, at p. 359). Rather, it accepts that police

officers, like other professionals, may make minor errors or errors in judgment which cause unfortunate results, without breaching the standard of care. The law distinguishes between unreasonable mistakes breaching the standard of care and mere “errors in judgment” which any reasonable professional might have made and therefore, which do not breach the standard of care. [Emphasis added.]

[107] In *Hill*, the Court emphasized that police officers are professionals and their conduct should be assessed in the same way that other professional negligence claims are evaluated. Therefore, in considering the standard of care, the degree of discretion afforded to them in the exercise of their duties is important:

[52] Police, like other professionals, exercise professional discretion. No compelling distinction lies between police and other professionals on this score. Discretion, hunch and intuition have their proper place in police investigation. However, to characterize police work as completely unpredictable and unbound by standards of reasonableness is to deny its professional nature. Police exercise their discretion and professional judgment in accordance with professional standards and practices, consistent with the high standards of professionalism that society rightfully demands of police in performing their important and dangerous work.

[53] Police are not unlike other professionals in this respect. Many professional practitioners exercise similar levels of discretion. The practices of law and medicine, for example, involve discretion, intuition and occasionally hunch. Professionals in these fields are subject to a duty of care in tort nonetheless, and the courts routinely review their actions in negligence actions without apparent difficulty.

[54] Courts are not in the business of second-guessing reasonable exercises of discretion by trained professionals. An appropriate standard of care allows sufficient room to exercise discretion without incurring liability in negligence. Professionals are permitted to exercise discretion. What they are not

permitted to do is to exercise their discretion unreasonably.
This is in the public interest.

[Emphasis added.]

[108] The general standard of care by which a police officer's conduct is measured – i.e., that of a reasonable police officer in similar circumstances – is a question of law and will not vary between cases. Expert evidence is not required to establish this general standard of care. (See *Krawchuk v. Scherbak*, 2011 ONCA 352, leave to appeal refused, [2011] S.C.C.A. No. 319, at para. 125 and *Meady v. Greyhound Canada Transportation Corp.*, 2015 ONCA 6 at para. 34.)

[109] Translating the general standard into particular obligations imposed on a defendant in a given case (i.e., the content of the standard) and the determination of whether the defendant has met those obligations (i.e., whether there is a breach), are questions of fact that can only be interfered with on appeal if found to be based on palpable and overriding error (see: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 10; *ter* 10

Neuzen v. Korn, 1995 CanLII 72 (SCC), [1995] 3 S.C.R. 674 at para. 55; *Krawchuk* at para. 125; and *Meady* at para. 34).

[110] External indicators of reasonable conduct, including professional standards and internal policy, may inform the content of the standard and whether it was breached (*Hill* at para. 70; *Ryan v. Victoria (City)*, 1999 CanLII 706 (SCC), [1999] 1 S.C.R. 201 at para. 29; *Burbank* at paras. 91-92; *Krawchuk* at para. 125). However, policies and statutory standards, while instructive, are not definitive of the content of the standard of care (*Hill* at para. 70). In *Roy*, this Court noted:

[36] ... The policy of a police force is an important factor in determining the standard of care a peace officer must observe, but it is not determinative, nor is it to be treated as if it were a statute imposing civil obligations. ...

[111] Similarly, while compliance with policy may be an important factor to consider in determining whether the standard of care has

been met, failure to follow policy does not automatically compel the conclusion that the standard of care was breached. As this Court noted in *D.H. (Guardian ad litem of) v. British Columbia*, 2008 BCCA 222:

[83] The respondents and the trial judge put considerable weight upon the policies of the B.C. Corrections Branch as demonstrating a failure to meet the requisite standard of care. The primary obligation of the probation officers is set out in the Correction Act. The policy directives function as a guide and are of assistance in determining the standard of a reasonable probation officer. Failure to comply with the policy raises questions as to the quality of judgment brought to bear on the issue by the probation officer but does not, by itself, compel a conclusion that the probation officers failed to meet the standard of care. Here, the policy required information to be given to the at risk person “limited to that information required to enhance safety”. The policy goes on to say that in most cases the information would identify the offender by name, general residential area, criminal history, modus operandi and other information needed to identify why there is a risk, but it is couched in terms that leave the degree of detail in any particular case to the probation officer. [Emphasis added.]

[112] As well, in *Doern*, this Court endorsed the trial judge's conclusion that:

[15] ... Although the policy does not, in itself, constitute the standard of care, compliance with the policy, in my view, is a very important factor to consider in determining whether the standard of care has been met.

[113] Further, in assessing whether an officer had breached the standard of care required of him, the trial judge in *Radke* stated (at para. 73), “it is necessary to determine whether he complied with the policy” and (at para. 74) quoted from *Noel (Committee of) v. Botkin* (1995), 1995 CanLII 3320 (BC SC), 9 B.C.L.R. (3d) 21 (S.C.) where Clancy J. stated:

[65] In summary, the question to be asked in assessing the conduct of police officers during pursuit is whether they, viewed objectively from the viewpoint of a reasonable police officer, acted reasonably and within the statutory powers conferred upon them. In considering that question, the Court must take into account that officers will be expected to perform the duties imposed on them by statute and to comply with policies adopted by the force to which they belong. A failure to comply with policy will not necessarily constitute negligence, nor will an error in judgment. Officers are exempted from compliance with certain traffic rules, provided they meet the requirements of section 118 of the *Motor Vehicle Act*. There must be recognition that officers are required to exercise judgment in balancing the competing interests of arresting wrongdoers and protecting citizens. [Emphasis added.]

73. An examination of the statutory language in the Police Act of British Columbia, Section 77(3)(m)(ii) gives guidance to objective reasonableness where it defines “neglect of duty” with the words “promptly and diligently” in the performance of one’s duties. These words requires one to act without hesitation and to perform their duties with an application of one’s mind to the duties imposed. This gives meaning and understanding of the objective standard of reasonableness.

74. Understanding further the particular nature of what one’s duty as an officer might be, and thus a measurement of objective reasonableness, is the imposition of a high duty of care as stated in VPD Policy 1.4.6 Arrest and Detention. The policy recognizes that persons in police custody are potentially vulnerable and reliant upon the officer for medical assistance. The policy mandate upon officers is to protect and take medical care of those who are medically vulnerable while in their custody. To give context, definition and understanding to the VPD policy are a variety of procedural steps which guides the officer’s execution of his duties for such persons. This also includes completing the Jail Arrest Form and noting the affected person’s medical condition. An examination of the Form under the heading “Medical Remarks/Known Drug Use/Infections/Diseases” reveals a number of particulars which requires completion by the officer concerning medical treatment or the drug or alcoholic state of the affected person. As one reviews other aspects of that duty, VPD Policy 1.4.6 references 1.2.2 which

addresses the need to evaluate the affected person's ability to make a competent, rational decision to reject medical aid. This requires the officer to take particular heed of the degree of impairment plus an ability of the affected person to communicate beyond excessive reliance on responses to simple commands.

75. The Police Act and the VPD Policy and Procedures thus gives guidance of the objective standard of care of a reasonable officer in similar circumstances in determining whether or not he had carried out his duties "without good or sufficient cause," being mindful that as professionals they are entitled to exercise reasonable discretion, within the parameters of a reasonable officer, as they execute their duties.

THE BURDEN OF PROOF

76. From *F.H v McDougall*, 2008 3 SCR 41 the burden of proof is on the balance of probabilities which lies upon the body alleging the misconduct. It is evidence which is sufficiently clear, convincing and cogent.

DISCUSSION, ANALYSIS AND FINDINGS OF FACTS

77. The questions to be answered as to whether there has been a "neglect of duty" are these:

A. What is the duty of care?

B. What is The Evidence - Objectively Evaluated?

C. Is there a Breach of the Duty of Care and if so is there "good or sufficient cause" to excuse the neglect as objectively considered from the standard of a reasonable police officer with similar training, knowledge, skills and experience in similar circumstances?

78. **Application of Serious Blameworthy Conduct?** Counsel had submitted that "serious blameworthy conduct" is the last in the chain of analysis. Upon careful consideration, in my respectful view this residual analysis distorts an application of the objective standard of reasonableness as it reintroduces a subjective analysis of what amounts to culpable negligent conduct. It narrows the range of neglectful

duty as it uses intention based upon a high standard of care such as deliberateness, recklessness, wilfulness or some meaningful moral culpability as the only type of conduct capable of being neglectful. This defeats the objective evaluation of intent contained within the legislative language of section 77(3)(m)(ii) of the Police Act which focuses on “without good or sufficient cause.” This is a much broader assessment of circumstances potentially amounting to neglect of duty.

79. The analysis of neglect of duty should be evaluated within the scope of the objective standard of reasonableness as discussed in *Bergen v Guilke* (supra) and whether, upon the whole of the evidence objectively considered with the lens of a reasonable officer in similar circumstances, reasonable. While intention or wilfulness are certainly potential elements within the range of breaches of duty such categories are not the only types of neglectful conduct which are subject to scrutiny.

A. THE DUTY OF CARE

80. The duty of care exists through section 77(3)(m)(ii) of the Police Act and “VPD Policy 1.4.6 Arrest of Persons with Injuries or Other Apparent Medical Risks.” By the Policy it acknowledges a high degree of responsibility upon the police to ensure “the well-being and protection of those in their custody and ensure such persons receive appropriate medical assistance.” There is as well the common law duty to protect life.

81. The nature of the performance of that duty is contained in the Police Act which states the performance of one’s duties are to be done “promptly and diligently.” That is, without hesitation and with mindful application of one’s duties.

82. Contained within VPD Policy 1.4.6 is the Procedure which outlines the steps when dealing with those whose well-being and protection necessitates action. Particularly, noted is paragraph 1 which imposes a duty to “request the attendance of BC Ambulance Service, Vancouver Fire and Rescue Services or other medical professionals” if he believes the person is “in need of medical assessment or treatment.” Additionally by paragraph 2.d, transport a person who is in custody to a hospital if the person is “incapable of making a rational decision with respect

to medical treatment due to intoxication, mental health issue and/or medical condition such as a head injury.” Furthermore, 2.d incorporates the Policy contained in 1.2.2 which speaks about the use of force to provide medical aid. This Policy acknowledges the right for an injured or sick person to refuse medical aid but the caveat is the person must be capable of making a “competent, rational decision.” In making that assessment the Policy necessitates that the officer must “pay particular attention to the person’s degree of impairment and ability to communicate, and not rely excessively on the person’s ability to follow simple commands.”

83. Further noted is the duty contained in Policy 1.4.6 and from the Procedure at paragraph 8 the requirement for the officer to complete the Jail Arrest Form.

84. As commented in *Bergen v Guilke* (supra) the policy and procedures are important and instructive factors of what reasonable conduct might include for it informs the parameters of their duties but it is not definitive of the standard of care. One is to be mindful that included in the evaluation is an assessment of the circumstances that gives rise to the discretion the officer exercised as viewed from the perspective of the reasonable officer which gives substance and meaning to the objective determination of whether or not he had carried out his duties “without good or sufficient cause.”

B. THE EVIDENCE OBJECTIVELY EVALUATED

85. Carefully examined is the conduct of the officer and observations of the affected person’s state of intoxication. From the time of arrival at her SRO at approximately 0800 hours until they left at 0820hours, she did not exhibit any signs of intoxication nor odour of alcohol although she acknowledged a night of drinking and was an alcoholic. There was no evidence noted of any alcohol bottles in her residence. There was a lack of any indicia of impairment adversely affecting mobility or thought. She was articulate and responsive to questions posed. Furthermore, the officer had satisfied himself that any lingering concerns of possible suicide was not an extant issue. There was however an outstanding endorsed warrant which was executed with the intention of having her released after fingerprinting. She understood the process and accompanied the officers without difficulty to their police vehicle.

86. During the drive to VPD Cambie which had taken 15 minutes, she fell asleep in the police car. Upon arrival at 0835 hours, there was a distinct change in her level of intoxication. She required assistance in balance and walking. Enquiries were made by Cst [REDACTED] whether she had consumed any drugs or anything else which she responded negatively. Cst [REDACTED] observed some of her responses were murmurs. They left about 0840 hours.

87. Noted is her rapid change in her level of intoxication over a period of only 15 to 20 minutes. Her balance, demeanor and ability to communicate had significantly deteriorated. Cst [REDACTED] stated that in his experience he has seen this type of rapid deterioration as evidenced by the affected person in others. While noting this evidence the question remains open as to whether the discretion he exercised in the execution of his duties for her care was reasonable.

88. The evidence establishes that her condition was such that the officer was concerned for her well-being. Upon questioning her, he adds that if she had acknowledged having taken anything he would have called EHS or transported her to the hospital. Nonetheless, her condition remained of such a concern to the officer that he decided to utilize his past experience, having worked at the Jail, for quicker access to the on-duty nurses who had the medical training to assess her if there was something more concerning than intoxication or fatigue.

89. For specifics he relates the nurses would come out to make a medical assessment if that person was a SIPP or a BOP. He noted that others brought in on charges would have an opportunity to see a nurse at some point.

90. By the time they reach the VPD Jail at 0850 hours, approximately 10 minutes after departure from VPD Cambie, the evidence establishes a further deterioration of the affected person. She was nonresponsive to verbal commands and had to be awoken by a nerve pinch technique. She was unable to walk or maintain an upright position which required the support of the officers holding her up against a wall until a wheelchair was obtained. Six minutes later at 0856 she was taken into the Jail. In the Jail the assistance of several persons was required to remove her from the wheelchair. She was laid prone on the ground for a search, returned to her wheelchair and subsequently placed into a holding cell where she was then laid on her side in a safety position on a mattress on the ground.

91. Cst ■ said that when he initially paged the Jail through the intercom, he had informed the Jail about her state of intoxication and requested that she be brought directly into the Jail rather than the pre-hold area. The officer relates that as the affected person was being transferred into the Jail with the assistance of the guards and a wheelchair, it was then he made a request to have a nurse assess the affected person. Noted is that this request does not have confirming evidence from other witnesses. SMC ■ the jail guard who went out to assist bringing the affected person by wheelchair into the Jail has no recollection of such a conversation. While she asked a nurse, who was in the area as the affected person was being searched, a request to check her, the nurse asked if she was conscious and breathing which was responded to positively. The nurse deferred her check to her hourly rounds which was first done about an hour later at 1000 hours.

92. Other evidence with regard to the procedure of when nurses go to the prisoner for an assessment in the sally port confirms the process in place at that time. That is, they will do so if a person arrives as a SIPP or BOP but not as a new charge or a warrant as was the case for the affected person. Indeed as will next be discussed, the contents of the Jail Arrest Form itself points to another potential source that would have informed the Jail of her custodial status and the type of response which had occurred.

93. It was admitted that Cst ■ had the Jail Arrest Form in his hands when he returned to his police car after the affected person had been taken into the Jail. As to how this Form had become part of the jail file record he acknowledges the prospect that either himself or Cst ■ would have taken it into the Jail but he has no independent recollection of doing so. The video recordings available does not add clarity to this point.

94. On review, its content is incomplete. The Form appears to have been completed by Cst ■ as the arrest box and transport box has his badge number. Examining the content of the Form is an absence of any notation under "Medical Remarks" which might alert the Jail of any health concerns for the affected person such as "being under the influence of alcohol." He expressed in his trial evidence the possibility of an oversight. However in conflict with this he also denies that what was written under the heading "Circumstances of Arrest" with the words

“accused had difficult night – called EHS – Has Warrant” was his handwriting. Of the words written the “Warrant” status would invoke the procedure at the Jail for an assessment by a nurse at some point in time, but not on intake. The words “called EHS” does not having confirmatory evidence from a review of CAD or the 911 audio. It is not clear to me who had prepared the Jail Arrest Form. Nonetheless there are flaws in its content which on its face would potentially cause the affected person to not receive the prompt medical attention that was hoped for.

95. As a collateral observation of the evidence presented, other than the point in time of the code blue declaration, it is unclear whether the nursing staff’s procedure during their hourly rounds of care was an assessment done by observations through a cell door or a hands on assessment of vitals.

96. Counsel submits that the opinion evidence of the coroner is conclusive that the officer did not neglect any duty of care. Particularly, from the evidence provided to her about the affected person’s declining condition as unsteady on her feet but being able to converse is akin to a night of alcohol consumption and would not alert one to conclude she was in a critical or life threatening situation.

97. With respect, this evidence is not determinative of the question to be addressed. On an evidential basis, the doctor’s opinion did not have the benefit of any of the video evidence. Noteworthy is the video at the Jail which is graphic in its depiction of a person who was unable to stand and needed the assistance of several persons to help with her movements. This is a markedly different person in balance and demeanor from what was seen of her about 10 minutes prior at VPD Cambie. It is further dramatically different yet again from what was observed of her at the SRO on [REDACTED] at the time of her arrest at 815am, or about 20 minutes prior to arrival at VPD Cambie where the videos and other evidence establishes she was interacting in a normal manner. She was then articulate, with clear speech, and had a normal and steady gait.

98. Furthermore, to say that the affected person was responsive to questions posed is a conclusion for which the evidence is equivocal. While the officer was of the view that she had not stopped listening or responding to questions or was irrational, there is an abundance of contrary evidence. Furthermore, the evidence establishes a baseline for comparison purposes of her ability to communicate

when one notes her active interaction at the SRO with the officers, as opposed to later when her state of intoxication became extreme. Cst [REDACTED] observed some of her response to questions at VPD Cambie were only murmurs. Adding to the evaluation of comprehension is Sergeant [REDACTED] observations that release on an endorsed warrant will not occur until a person is sober enough to understand or comprehend the terms of her release. The video evidence at VPD Jail and the help provided by the Jail staff establishes she was incapable of independent mobility given her impaired state. Upon the totality of the evidence and on the balance of probability I conclude that her ability to communicate or make rational decisions was negligible.

99. It was submitted that the Covid Form is evidence of an ability to communicate. With respect, I disagree for a careful examination of this Form establishes it was prepared at 0830 hours by Cst [REDACTED]. This coincides with the time period while they were in transit and prior to arrival at VPD Cambie and not while at the Jail. Given the time line of the changes in her state of intoxication this form would have been completed when she was not as impaired as evidenced later at the Jail.

C. IS THERE A BREACH OF THE DUTY OF CARE AND IF SO IS THERE “GOOD AND SUFFICIENT CAUSE” TO EXCUSE THE NEGLIGENCE AS OBJECTIVELY CONSIDERED FROM THE STANDARD OF A REASONABLE POLICE OFFICER WITH SIMILAR TRAINING, KNOWLEDGE, SKILLS AND EXPERIENCE IN SIMILAR CIRCUMSTANCES?

100. The officer’s decision to take the affected person to the Jail rather than a hospital, was derived from his experience and opinion that she would receive more prompt medical assessment in that setting. Was this contrary to the Policy contained in 1.4.6 requiring that “appropriate medical assistance” be provided? Furthermore, does his decision amount to “good or sufficient cause” as contained in section 77(3)(m) of the Police Act to excuse the neglect? Finally, did he carry out his duties “promptly and diligently” as required by section 77(3)(m)(ii)? Objectively considered, did the officer’s conduct amount to what a reasonable officer with similar, training, knowledge, skills, and experience would have done in similar circumstances with due consideration given to the exercise of reasonable discretion?

101. What guides the officer's duty is VPD Policy 1.4.6. The Policy recognizes that those in custody are vulnerable and entirely dependent upon the officer to obtain medical assistance for them. The obligation is a high duty of care upon the officer to ensure the well-being and protection of those who are in custody and it must be done, in the words of the policy, with "appropriate medical assistance."

102. Counsel submits that from the officer's experience he has observed this type of rapid deterioration in the past. Essentially, drawing upon that experience, her intoxicated state was one he was alert to. The next question is whether, upon the evidence, was his subsequent conduct, when objectively considered, such that he did what he could reasonably do to protect her from harm.

103. Looking to the whole of the evidence and on the balance of probabilities it is clear that the affected person's degree of impairment had rapidly deteriorated. This was plainly evident while at the VPD Jail. She was unresponsive to verbal commands which necessitated a nerve technique to awaken her. She was unable to walk or stand and required a wheelchair to assist her.

104. Weighing the evidence further, while the officer says she was rational and able to communicate, the whole of the evidence says otherwise. As I previously found, her communication ability beyond simple commands was limited and would not amount to a rational decision making process.

105. It is noteworthy that the officer had initially formulated his opinion about her intoxication while at VPD Cambie and it was then that he became concerned for her well-being. Further noted is that while she responded negatively to questions concerning consumption of drugs this did not alter his ongoing concerns about her changed state of impairment. Indeed the facts establish that his observations of her caused him sufficient concern that he then decided to have the Jail's procedure for a nurse assessment become the procedure of care rather than a hospital setting. While this might have satisfied Procedure 1 contained in 1.4.6, provided the officer ensured there was appropriate follow-up for a Jail nurse assessment, her circumstances had changed again by the time they reached the Jail. As discussed in the preceding paragraphs, she was highly impaired and was incapable of a rational decision with respect to medical treatment. This would either set the foundation for a re-assessment of Procedure 1 and/or invoke Procedure 2.d. In either instance, his decision failed to satisfy the overarching

Policy of ensuring the affected person receives “appropriate medical assistance.” At the very least, changing circumstances would have caused a reasonably prudent officer to re-assess what the appropriate medical care for the affected person might be.

106. Furthermore, he made an assumption based on his 6 months prior work experience at the Jail approximately 5 years prior, that upon his request she would be either seen by a nurse immediately or at some other point in time while she was in the Jail. It is however noted that the procedural protocol at the Jail complicated his expressed intentions for there was a flaw in his consideration of the medical aid he thought she would receive. That is, as she was at the Jail on warrant status, as was evidenced on the Jail Arrest Form, there was no obligation for an immediate nurse assessment. Furthermore, a records check by the Jail had revealed her warrant status. It would also appear that his concerns for her intoxicated state and request she be seen by a nurse was not clearly conveyed. There was certainly no indication from the evidence by the Jail staff of any confirming evidence of this request, either by words or by conduct.

107. As matters evolved, while a guard had asked a nurse to examine the affected person as she was being lodged into cells, this request was deferred to the hourly rounds. Within the ambit of Jail protocols she was not prioritized for medical assistance. Of particular note, they had no information of her rapid descent into a significantly impaired state. Only that she presented as impaired. Furthermore, the absence of pertinent health details on the Jail Arrest Form points to an additional negative element in the performance of his duties.

108. His absence of mindful application to his duties resulted in a neglectful application of his discretion within the boundaries of the duties imposed upon him as he did not properly apply his mind to the care she should have received given her state of intoxication. Rather than follow the VPD Policies and Procedures and the Police Act, he relied on his past experience and made assumptions about the type of care he thought she would receive at the Jail. Furthermore, he did not pause to re-evaluate his duties given her dramatic change in her wellbeing which was plainly evident at the VPD Jail. It matters not that the causation of her death was from various and other uncertain variables for those are matters of hindsight which do not bear upon the question of whether a duty had been breached. Furthermore, what occurred while in the care of the Jail staff

are not aspects that have any bearing upon whether or not the officer had neglected his duties.

CONCLUSION

109. Objectively weighed from the standard of a reasonably prudent police officer with similar training, knowledge, skills and experience in the same circumstances prevailing at the time, upon the whole of the evidence and on the balance of probabilities, I conclude there is clear, cogent and compelling evidence that the officer had neglected his duties without “good and sufficient cause” in failing to “promptly and diligently” follow his duties contrary to Section 77(3)(m)(ii) to ensure the well-being and protection of the affected person with appropriate medical assistance. The neglect is elevated beyond that of a mere job performance issue.

110. Pursuant to Section 125(2) the officer may make submission as to the appropriate disciplinary or corrective measures within 10 days of receipt of the Form 3 that accompanies these reasons.

DATED this 25th day of February, 2025.



Brent G. Hoy (PCJ ret'd) Discipline Authority