

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

**ADJUDICATOR'S DECISION
FOR PROPOSED DISCIPLINARY OR CORRECTIVE MEASURES
PURSUANT TO SECTION 128(1) of the POLICE ACT
(Supplement to Form 4)**

**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: Mr. Prabhu Rajan
Police Complaint Commissioner (Commissioner)

Introduction

1. On February 25, 2025, I had rendered my section 125 decision and found that Cst ■ had committed a disciplinary breach of public trust, Neglect of Duty, contrary to section 77(3)(m)(ii) in failing to “promptly and diligently” follow his duty to ensure the well-being and protection of the affected person with appropriate medical assistance. This stage of the proceeding is an evaluation of the appropriate disciplinary or corrective measures to be imposed pursuant to section 126 and 128(1) of the Police Act.

The Misconduct

2. In brief summary, these are the facts giving rise to the finding of “neglect of duty.” Cst ■ had responded to a wellness check of the affected person as she had expressed threats of self-harm. On attendance the officer learned she was an alcoholic and had been drinking throughout the night. After confirming she was cognitively clearheaded and did not exhibit any signs of impairment she was arrested on an outstanding endorsed warrant with a plan to release her. After a 15 minute drive to VPD Cambie the affected person exhibited marked signs of impairment. It was such that Cst ■ was concerned for her health and well-being and decided, given his past work experience at VPD Jail, that nursing assessment was available and would be the procedure of care rather than a hospital setting. They were at VPD Cambie for about 5 minutes. Upon arrival at VPD Jail 10 minutes later the affected person exhibited extreme signs of intoxication. She needed to be awoken with a nerve pinch technique, was unable to walk or maintain her balance without assistance and required a wheelchair. Her ability to communicate was negligible. While the officer said he had informed the Jail staff about the impaired state of the affected person and the need for nursing care, there is no confirming evidence of this.

3. The Jail protocols at that time did not invoke an immediate nurse assessment as she was brought to the Jail on warrant status. This status also appeared on the Jail Arrest Form along with other information that had not been properly or entirely completed. These flaws points to another element which put into place a Jail procedure which would not have included prompt medical attention.

4. At paragraph 108 of my section 125 decision I recite these conclusory remarks:

“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.”

Section 126 – Imposition of Disciplinary or Corrective Measures

5. Section 126 of the Police Act provides the statutory considerations in determining what the appropriate disciplinary or corrective measures might be for the misconduct under review. It states:

(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 section 113[complainant's right to make submissions], the discipline authority must, subject to this section and sections 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.

Section 126(2) - Aggravating and Mitigating Circumstances Considered

(a) seriousness of the misconduct

6. The officer's misconduct of "neglect of duty" contrary to Section 77(3)(m)(ii) of the Police Act was his failure, without "good or sufficient cause," to "promptly and diligently" ensure the affected person received appropriate

medical assistance. As discussed in my section 125 decision of February 25, 2025 there are a multitude of different types of negligent conduct, both advertent and inadvertent, that may result in findings of negligence as determined on the objective standard of reasonableness. Characterizing the type of culpability becomes an important step in addressing the seriousness of the misconduct and resultant discipline to be imposed. Where there are elements of “deliberateness, recklessness or wilfulness” the culpability is elevated. Others, such as the circumstances facing the officer, is more in the nature of inadvertence. That is, the execution of his duties was done without prompt and careful mindfulness of his obligations to his duties as set out in the VPD Policy and Procedures. I agree with counsel’s submissions that the type of neglect which Cst [REDACTED] had committed is at the lower range of seriousness.

7. It is of importance to acknowledge the affected person’s loss of life. She had multiple life challenges with addiction plus numerous negative health circumstances which had regrettably caught up to her. It is a sad event. I am however mindful in this assessment that Cst [REDACTED] lapse of duty was not causative of her death and is not a factor in determining the appropriate disciplinary measure.

(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

8. Cst [REDACTED] has been a police officer since [REDACTED]. He has no prior discipline record. His performance reviews reveals an individual with exceptionally strong leadership qualities; intuitive decision making abilities; positive mentorship with recruits; sensitive management style with others of the public and a communication ability that is easy going and approachable. Additionally, he is diligent in the completion of his assigned tasks which are done in accordance with VPD standards; sets a positive example and treats others with fairness and dignity.

9. His work assignment to District 2 reveals an individual who has the professional, social and interpersonal skills to perform his duties effectively in a challenging part of the city where poverty, addiction, mental health trauma and other barriers face those of the downtown east side.

10. Brought to my attention by counsel was a particular incident which postdated the matter at hand and brings into focus Cst ■ learned experiences. The officer had transported a suicidal person to St Paul's Hospital for the purposes of a medical assessment but it was denied due to overcapacity. He next went to Vancouver General Hospital with the same result. However, his persistence with the latter Hospital resulted in the person's admission.

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career

11. I accept counsel's submission that as this matter has been outstanding since 2021 it has exacted an emotional toll upon the officer and his family and is especially so given that a death had occurred.

(d) the likelihood of future misconduct by the member

12. Given the officer's lack of any service record of discipline and the example referred to in paragraph 10 of this decision reflecting his diligent pursuit of his duties, I am confident in saying it is unlikely he will commit any further misconduct.

(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence

13. It goes without saying that everyone is entitled to have a hearing on triable issues whether they be on the merits and/or the law of any misconduct. This is part of due process and certainly not a negative element.

14. Counsel submits that the officer has accepted full responsibility and understands that he "could and should have exercised his discretion in a more robust manner given Ms. ■'s declining condition."

(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

15. Cst ■ decision to pursue what he thought would be a nurse assessment at the VPD Jail was driven by his past work experience. There was a gap in that expectation as she was there on warrant status which, at the time, would

not result in an immediate health assessment. It appears this policy has already been revised but if not it should be revisited to ensure that all intoxicated persons are immediately medically assessed regardless of whether they are a SIPP or a BOP arrest or an arrest on a warrant.

(g) the range of disciplinary or corrective measures taken in similar circumstances

16. In my review of past decisions and the OPCC annual reports this case is rather unique. As I discussed in paragraph 6 of this decision, this is not a situation where the level of culpability is serious. As well the officer has no prior history of misconduct and is, by all accounts, an exemplary, hardworking, compassionate and dedicated officer. He is contrite and fully accepts responsibility for his conduct and has reviewed the relevant VPD Policy and Procedures and jail policy and operations in light of this matter. I agree with counsel's submission that the range should be "advise as to conduct."

(h) other aggravating or mitigating factors

17. There are no other aggravating factors.

18. In further mitigation counsel observes the officer was at all times inquisitive and interacted in a caring manner with the affected person. Indeed as one reviews the evidence this was observed by a support worker at the SRO when the officers initially attended. She observed he treated her with courtesy and respect.

Conclusion

19. A final consideration in this process is Section 126(3) of the Police Act. This requires that I must place at the forefront an approach that "seeks to correct and educate" when evaluating disciplinary or corrective measures. The proviso would encompass an unworkable solution or if it would bring the administration of justice into disrepute.

20. Upon all the circumstances, the submissions made, materials files and the various possible outcomes as set out in Section 126 (1) I am satisfied that the appropriate penalty is subsection (k) advise as to conduct. This meets the

objectives of the Act to correct and educate and would not bring the administration of justice into disrepute given the circumstances of this case, the type of neglect of duty considered, the absence of any other discipline record and the officer's exemplary career. The content of that advise has been set out in the Section 125 decision of this matter which the officer has already carefully read. I am assured he has learned a valuable but difficult lesson and am confident in saying he will likely use this experience in a positive manner to enhance his career.

DATED this 18th day of March, 2025.

A handwritten signature in blue ink, appearing to read "B. Hoy", with a stylized flourish extending to the right.

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