

CONCLUSION OF PROCEEDINGS

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

OPCC File 2021-19627
June 2, 2025

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

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

And to: Chief Constable Steve Rai
c/o Vancouver Police Department
Professional Standards Section

The Office of the Police Complaint Commissioner (OPCC) completed its review of the decision issued by Retired Judge Brent Hoy (Discipline Authority) pursuant to section 133 of the *Police Act* in this matter. The Discipline Authority found the following allegation to be substantiated and proposed the following discipline or corrective measure:

1. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*; specifically, for failing to ensure the well-being and protection of the affected person with appropriate medical assistance.

Discipline Proposed – *Advice to Future Conduct*

Constable [REDACTED] (Member) was provided a copy of the Discipline Authority's findings and informed that if he was aggrieved, he could file a written request asking me to arrange a public hearing or review on the record. Pursuant to section 136(1) of the Act, such a request must be filed within 20 business days of receipt of the report setting out the Discipline Authority's findings.

On April 16, 2025, our Office received such request from the Member asking that I exercise my authority to arrange a review on the record.

The request does not question the conduct of the investigation or the Discipline Authority's factual findings or decision regarding disciplinary or corrective measures.

Rather, the Member submits that the Discipline Authority erred in law by failing to incorporate a requirement of serious blameworthiness into the test for *Neglect of Duty* under the *Police Act*, and that it is therefore necessary in the public interest to have a second retired judge consider the matter at a review on the record. Although it is not expressly stated, the assumption appears to be that if serious blameworthiness was required, the Member's conduct would not be found to be seriously blameworthy.

Taking into account all the factors described in section 138(2) of the *Police Act*, I have determined that neither a review on the record nor a public hearing is necessary in the public interest. Pursuant to section 138(5) of the *Police Act*, my reasons for that decision were as follows.

First, I do not consider there to be an arguable case that the Discipline Authority's key legal findings are incorrect.

In my view, the key legal findings are that (i) *Neglect of Duty* under the BC *Police Act* is to be evaluated from an objective standard of care of a reasonable officer in similar circumstances, (ii) the civil standard of care applied to police in cases alleging professional negligence is equally applicable to *Neglect of Duty* under the *Police Act*, and (iii) subjective considerations of deliberateness, recklessness, willfulness, or some meaningful moral culpability are not part of the analysis.

In my view, these findings are consistent with the wording of section 77(3)(m)(ii) of the *Police Act*, and with the 2010 legislative amendments referenced by the Discipline Authority, which removed language that had previously imported subjective elements into the test for *Neglect of Duty*. I also note that the Member does not appear to dispute these propositions, arguing in the request that the test is properly objective not subjective, and the civil standard of care applies. In the circumstances, I do not consider there to be an arguable case that the Discipline Authority's interpretation of the statute is incorrect within the meaning of section 138(2)(d)(iii) of the *Police Act*.

Second, the Member relies heavily on case law that interprets the relevant Ontario legislation as requiring serious blameworthiness in the form of willfulness or a degree of neglect that changes an issue from a mere performance consideration to one of misconduct.

In my view, the Discipline Authority thoughtfully addressed the Ontario cases in a principled manner. Taking note of differences in the wording of the applicable legislation, he said the Ontario cases should be "treated with care." Read as a whole, I understand the Discipline Authority to say that, to the extent these cases call for any added element of serious blameworthiness above and beyond a breach of the objective standard of care, they should not be followed or applied in British Columbia. I agree with that conclusion and would add that the Discipline Authority was not bound to follow decisions from a different jurisdiction decided under a different statute containing different language, or to further explain his reasons for declining to do so.

Third, I acknowledge there are cases decided under the *Police Act* that have cited the Ontario cases relied on by the Member and/or referred to a requirement of serious blameworthiness when assessing allegations of *Neglect of Duty*. However, the Member has not pointed to any binding decision from a British Columbia court that the Discipline Authority failed to follow. To the extent that other discipline authorities or adjudicators under the *Police Act* may have reached contrary findings, those results were not binding. It was open to the Discipline Authority to reach a different outcome, provided he explained the basis for his conclusions. I am satisfied the Discipline Authority provided an adequate explanation in this regard.

Fourth, the Member effectively submits that, without an added requirement of serious blameworthiness, misconduct will be too readily found under the BC legislation. With respect, this ignores passages from the Discipline Authority's decision recognizing that the objective standard of reasonableness does not require perfection, and that minor errors in judgment may cause unfortunate results without breaching the objective standard of care. Indeed, the Discipline Authority expressly found in this case that the Member's neglect in this case was "elevated beyond that of a mere job performance issue" (at paragraph 109), thus suggesting that other types of errors might not be similarly elevated. In my view, the Discipline Authority's decision to apply the objective standard of care, without adding an additional element of serious blameworthiness, is not incorrect.

Fifth, the Member submits that a review on the record is necessary because the Discipline Authority did not hear full legal argument on the material issues. However, the Member was represented by counsel at the discipline proceeding and appears to have had a full opportunity to provide legal argument in support of his position, including with respect to the role of serious blameworthiness in the *Neglect of Duty* analysis.

Sixth, while the Member has not taken issue with the Discipline Authority's decision on discipline or corrective measures, it is noteworthy that the measure imposed, Advice as to Future Conduct, is the lightest available under section 126(1) of the *Police Act*. It thus appears that instead of dismissing the allegation of *Neglect of Duty* for lack of serious blameworthiness, the Discipline Authority (i) substantiated the allegation based on a failure to meet the required objective standard, then (ii) factored the Member's arguments about serious blameworthiness into the determination of disciplinary or corrective measures. In my view, it was open to the Discipline Authority to take this approach for all the reasons he has expressed. I do not consider this to be an incorrect interpretation or application of the *Police Act*.

Finally, the Member submits that a review on the record is needed to settle the law in British Columbia regarding the proper test for *Neglect of Duty* under the *Police Act*. As explained above, it is not clear to me there is any meaningful legal discord that requires further consideration. However, even if there was, the Discipline Authority in this case was a retired judge who conducted the discipline proceeding after a section 117 review. If the Member believes legal clarity is required, binding direction can be sought from the BC Supreme Court by way of an application for judicial review.

For all of the above reasons, I have determined that it is not necessary in the public interest to arrange a review on the record or public hearing. The decision to conclude this matter is final and this office will take no further action.

The disciplinary or corrective measure imposed (Advice to Future Conduct) is approved. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with *Police Act*, the measure imposed in relation to the Member has been completed, and that their service record of discipline has been updated.



Prabhu Rajan
Police Complaint Commissioner

cc: Sergeant [REDACTED], Metro Vancouver Transit Police
Inspector [REDACTED], Vancouver Police Department