

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  
CONSTABLE [REDACTED]

NOTICE OF ADJUDICATOR'S DECISION

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

And to: Chief Constable Suzanne Muir  
c/o Metro Vancouver Transit Police  
Professional Standards Section

And to: Sergeant [REDACTED] (Investigator)  
c/o Vancouver Police Department  
Professional Standards Section

And to: Marnie Larson  
Chair, Metro Vancouver Transit Police Board

And to: Mr. Prabhu Rajan  
Police Complaint Commissioner

## Introduction

This is a review under section 117 of the *Police Act*, R.S.B.C. 1996, c. 367 concerning allegations of misconduct against Constable [REDACTED] (hereinafter the "Member") of the Metro Vancouver Transit Police (the "MVTP"). The Police Complaint Commissioner has appointed me, as a retired judge, to conduct the review.

The allegations of misconduct arise out of an incident on July 26, 2022, wherein the Member attempted to stop a speeding civilian motorist whom he suspected of impaired driving. The car driven by that motorist (hereinafter the "AP vehicle" or the "[REDACTED]") went on to collide with another civilian vehicle, resulting in the death of the two occupants of that vehicle.

Owing to the two deaths involved in the incident, the matter was referred to the Office of the Police Complaint Commissioner (OPCC) on July 27, 2022,

On September 15, 2022, the Police Complaint Commissioner ordered an external investigation into the matter, pursuant to section 89(2)(a) of the *Police Act*.

The Independent Investigations Office (IIO) also asserted jurisdiction and commenced an investigation, which resulted in the suspension of the *Police Act* investigation until the IIO's process was completed.

The IIO released a public report on June 28, 2024, which concluded that there were no reasonable grounds to believe the Member committed an offence and the matter would not be referred to Crown counsel for consideration of charges against the Member.

The IIO Synopsis Report set out this brief summary of the incident:

On 2022-07-26 at approximately 2300 hours, in New Westminster GVTAPS officers, Cst [REDACTED] (driver) and Cst [REDACTED] (passenger), attempted a traffic stop of the AP vehicle driven by [REDACTED]. [REDACTED] was the passenger and owner of the AP vehicle.

The AP vehicle failed to stop for police and drove at a high-rate of speed south-westbound through the intersection of [REDACTED] Avenue and [REDACTED] St. The AP vehicle, travelling at a minimum speed of 118 km/h in a posted 50 km/h speed zone, after travelling at a minimum of 164 km/h five seconds prior to the collision, collided with a second vehicle travelling within a speed range of 22-24 km/h turning northbound onto [REDACTED] Street from north-east bound [REDACTED] Avenue. The front of the AP vehicle hit the second vehicle between the passenger doors. Two youths, [REDACTED] and [REDACTED] died in the collision.

Two contributing factors to the collision were noted in the ICARS report, namely the speed of AP vehicle at the time of the collision and that the

second vehicle made an illegal left turn from [REDACTED] Avenue onto [REDACTED] Street into the pathway of AP vehicle. If AP was not speeding, the injuries (death) to [REDACTED] and [REDACTED] might have been mitigated. If the second vehicle had not made an illegal left turn into the path of the AP vehicle, the collision would have been avoided.

AP [REDACTED] suffered a broken knee and various sutures and AP [REDACTED] suffered a minor head injury and was released from hospital.

GVTAPS commenced a concurrent investigation with assistance from Burnaby RCMP. [REDACTED] has been charged with criminal negligence causing death, driving while disqualified, and fleeing from police. These charges are before the Courts.

Subsequently, the driver of the AP vehicle, [REDACTED] was convicted of two counts of Criminal Negligence Causing Death contrary to section 220(b) of the *Criminal Code* in relation to this incident.

The IIO Narrative Report further described the incident:

On July 26, 2022 at approximately 11:00 pm, Cst [REDACTED] and Cst [REDACTED] attempted to stop AP vehicle for the purpose of entering an impaired investigation. The AP vehicle fled from police at a high rate of speed at [REDACTED] Avenue and [REDACTED] Street.

Cst [REDACTED] observed AP vehicle driving northbound on the [REDACTED] Bridge, in the same direction as Cst [REDACTED] at a high rate of speed, and almost side swipe the police vehicle as it passed. Cst [REDACTED] continued to observe erratic driving behavior from the AP vehicle and believed the driver [AP [REDACTED] might be impaired and initiated a traffic stop with lights and sirens.

AP began to accelerate away from Cst [REDACTED] who estimated AP Vehicle was driving more than 115 km/h in a 50 km/h zone while swerving toward oncoming traffic. Cst [REDACTED] believed AP vehicle was attempting to flee and did not pursue. After Cst [REDACTED] pulled over the police vehicle, Cst [REDACTED] and Cst [REDACTED] observed the collision at [REDACTED] Avenue and [REDACTED] Street. Inside the AP vehicle, a replica firearm and personal use drugs including fentanyl, heroin, methadone, oxycontin, and crack cocaine were found. [The firearm, found in the driver's footwell was originally thought to be a Glock pistol, but was determined to be an airsoft/pellet gun].

After the release of the IIO Report on June 28, 2024, the *Police Act* investigation resumed.

On August 2, 2024, the OPCC identified the Vancouver Police Department (VPD) as the mandatory external police agency and designated VPD Inspector [REDACTED] as the external Discipline Authority.

On March 5, 2025, VPD Professional Standards Investigator, Sergeant [REDACTED] completed his investigation and submitted his Final Investigation Report ("FIR").

On March 31, 2025, the external Discipline Authority issued her decision pursuant to section 112 of the *Police Act*. She considered two possible allegations of misconduct. First she considered whether the Member committed Neglect of Duty contrary to section 77(3)(m)(ii) of the *Police Act* by failing to comply with section 122 of the *Motor Vehicle Act* (MVA), the *BC Emergency Vehicle Driving Regulation* (EVDR) and *MVTP Policy* governing emergency driving.

Second, she considered whether the Member and/or his partner at the time, Constable [REDACTED] (hereinafter the "Member's Partner") committed misconduct by Neglect of Duty contrary to section 77(3)(m)(ii) of the *Police Act* by failing to make accurate and contemporaneous notes in relation to the incident.

The external Discipline Authority determined that none of the allegations of misconduct against the Member or the Member's Partner appeared to be substantiated.

### **OPCC Decision, Section 117 of the Police Act**

The Police Complaint Commissioner reviewed the decision of the external Discipline Authority and confirmed that the allegation of misconduct by Neglect of Duty in failing to make accurate and contemporaneous notes was not substantiated against either of the officers. Pursuant to section 112(5) of the *Police Act*, that decision is now final and conclusive.

However, the Police Complaint Commissioner did not agree with the external Discipline Authority's decision regarding Neglect of Duty in relation to emergency vehicle driving. The OPCC expressed the following concerns:

I have a reasonable basis to believe that the Discipline Authority's decision is incorrect in relation to the Neglect of Duty allegation regarding Constable [REDACTED] compliance with the MVA, EVDR, and MVTP Policy.

Officers driving emergency vehicles can exercise emergency response privileges under the MVA, EVDR, and MVTP Policy in prescribed circumstances. However, the exercise of those privileges carries risks for the public as well as for officers and, in the case of pursuits, those being pursued. For these reasons, the EVDR and departmental policy impose obligations around the use of emergency lights and sirens and require proportionality assessments that balance the relative risks of harm associated with exercising versus not exercising the emergency privileges.



In this case, Constable [REDACTED] made use of emergency response privileges by driving at speeds well above the posted speed limit (50 Km/hr) for extended periods when catching up to the speeding motorist and attempting to conduct a traffic stop. In the period before stopping at the red light, it appears he drove for more than a minute at speeds from 79 km/hr to 98 km/hr without any use of emergency lights or sirens. After making the left turn, he drove for at least 13 seconds at speeds ranging from 113 km/hr to a high of 124 km/hr – nearly 2.5 times the maximum speed limit.

I am concerned the Discipline Authority's decision fails to adequately assess Constable [REDACTED] potential non-compliance with the MVA, EVDR, and MVTP Policy at each stage, starting from the initial choice to drive at high speeds to catch up to and observe the motorist, and including the choice to follow the driver at very high speeds for at least 13 seconds before calling off the traffic stop. I am also concerned with the Discipline Authority's conclusions that (i) there was no "pursuit" until Constable [REDACTED] activated his siren and let it run through several cycles, and (ii) once there was objectively a "pursuit," Constable [REDACTED] complied with the requirements of the EVDR and MVTP Policy in that regard.

In my view, the Discipline Authority has not given sufficient weight to aggravating factors that should affect the assessment of how a reasonable officer would have responded in the circumstances.

For example, the only observable offence was speeding. By the time they caught up to the motorist when stopped at the red light, the Members knew the car was not stolen, that the registered owner had a valid licence, and that the motorist was not ignoring all rules of the road. I acknowledge that the Members raised concerns the motorist might be impaired, and that there is a strong public interest in ending the harms of impaired driving. However, I question the proportionality of engaging in extended periods of high-speed emergency driving in the absence of an observable offence more serious than speeding.

I also note that there was an opportunity to initiate a traffic stop when the vehicles were stopped at the red light. By that time, Constable [REDACTED] had had sufficient time to observe the motorist's driving, gather information, and decide on the traffic stop. However, rather than take steps to conduct a traffic stop at the red light, he waited for the light to change then tried to initiate the stop while following the motorist at a relatively high rate of speed. The Discipline Authority does not appear to have considered whether this was consistent with the objective standard of what a reasonable officer would have done in the circumstances.

Finally, the Discipline Authority states at one point that the MVTP Policy requires that if an officer determines a pursuit is about to occur, they must immediately disengage. It is difficult to reconcile the Discipline Authority's finding that Constable [REDACTED] was objectively in a pursuit after he activated his sirens following the left-hand turn but complied with the EVDR during that period of pursuit.

For all these reasons, it appears that the Discipline Authority erred in her analysis of whether Constable [REDACTED] departed from objective standards of what a reasonable officer with similar training and experience would have done in the situation and thereby committed Neglect of Duty.

I wish to acknowledge the tragic deaths that occurred when the motorist collided with the civilian vehicle causing the deaths of two people. These events surely had a traumatic impact on their loved ones and others involved in the accident, including the Members. In sending this matter for a s. 117 review, I am not determining that events would have unfolded any differently if different choices had been made. The fatal accident was a product of a variety of factors. My goal in sending this matter to a section 117 review is because of, in my opinion, a faulty analysis and apparent incorrect conclusion by the Discipline Authority, and to seek clarity about areas of concern relating to the Discipline Authority's interpretation of the facts and policies related to emergency driving responses.

Accordingly, pursuant to section 117 of the *Police Act*, the Police Complaint Commissioner appointed me, as a retired judge, to conduct a review of the Final Investigation Report and the evidence and records referenced therein, and to make a decision on the matter.

### **The Nature And Scope of a Section 117 Review**

The appointment of a retired judge and the nature and scope of a review are governed by section 117 of the *Police Act*.

Section 117(1) provides that the retired judge is to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;

(c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

Section 117(7) stipulates that the review is to be completed and the parties notified within ten business days, and sections 117(8)-(11) specify the nature and effect of the review decision.

Specifically, section 117(8)-(11) provides:

117 (8) Notification under subsection (7) must include

(a) a description of the complaint, if any, and any conduct of concern,

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],

(c) a list or description of each allegation of misconduct considered by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) [*prehearing conference*] applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive.

Some guidance on the interpretation of section 117 may be found in *Scott v. British Columbia (the Police Complaint Commissioner)*, 2016 BCSC 1970. There, Justice Affleck remarked at paragraph [39]:

[39] Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken. If that was the appropriate interpretation it would inevitably raise a serious issue of an apprehension of bias when the retired judge made preliminary findings adverse to the petitioner and was then required to conduct a disciplinary hearing. I conclude that the retired Judge adopted an interpretation which has now led to that unfortunate outcome.

Those remarks were in relation to the interpretation of section 117(9), which is worded somewhat differently from section 117(10).

In short, my task on this section 117 review is to review the Final Investigation Report and the evidence and records referenced therein, and make my own decision of whether the member's conduct appears to constitute misconduct under section 117(9) or whether the conduct of the member does not constitute misconduct under section 117(10).

My review is not an appeal from any previous determination. In particular, it is not an appeal from the decision of the external Discipline Authority. Indeed, for the purposes of this review, I have not been provided with a copy of the external Discipline Authority's decision. The only materials before me are the Final Investigation Report and what is referenced in that Report. At this stage I do not hear witnesses nor do I consider any additional evidence or submissions beyond what is referenced in the Final Investigation Report.



## **Alleged Misconduct**

"Misconduct" is defined in section 77(1) of the *Police Act* as including a disciplinary breach of public trust under section 77(3). For present purposes, sections 77(3)(m) and 77(4) are relevant:

77 (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:

- (i) properly account for money or property received in one's capacity as a member;
- (ii) promptly and diligently do anything that it is one's duty as a member to do;
- (iii) promptly and diligently obey a lawful order of a supervisor.

(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.

The allegation of misconduct against the Member here may be set out as follows:

That on July 26, 2022 Constable [REDACTED] committed Neglect of Duty contrary to section 77(3)(m)(ii) of the *Police Act*, by neglecting, without good or sufficient cause, to comply with the requirements of section 122 of the *Motor Vehicle Act* (MVA), the *BC Emergency Vehicle Driving Regulation* (EVDR) and *Metro Vancouver Transit Police Policy* (MVTP) governing emergency driving.

## **The Statutory and Regulatory Framework**

In carrying out their duties to enforce the law and protect the public, police officers from time to time may find it necessary to drive in a manner that would be illegal in other circumstances. They may, for example, have to exceed the speed limit or proceed through a red light. Our laws recognize that reality, and provide an exception or "privilege" for police officers, subject to certain limitations designed to minimize the risk that this might pose to the public.

## **Section 122 of the *Motor Vehicle Act***

The "privilege" for drivers of emergency vehicles is set out in section 122 of the *Motor Vehicle Act*, R.S.B.C. 1966, c. 318, which provides:

**122 (1)** Despite anything in this Part, but subject to subsections (2) and (4), a driver of an emergency vehicle may do the following:

- (a) exceed the speed limit;
- (b) proceed past a red traffic control signal or stop sign without stopping;
- (c) disregard rules and traffic control devices governing direction of movement or turning in specified directions;
- (d) stop or stand.

(2) The driver of an emergency vehicle must not exercise the privileges granted by subsection (1) except in accordance with the regulations.

(3) [Repealed 1997-30-2.]

(4) The driver of an emergency vehicle exercising a privilege granted by subsection (1) must drive with due regard for safety, having regard to all the circumstances of the case, including the following:

- (a) the nature, condition and use of the highway;
- (b) the amount of traffic that is on, or might reasonably be expected to be on, the highway;
- (c) the nature of the use being made of the emergency vehicle at the time.

## **The BC Emergency Vehicle Driving Regulation**

The *BC Emergency Vehicle Driving Regulation*, B.C. Reg. 133/98, O.C. 522/98 establishes the circumstances and conditions that apply to the exercise of the privileges granted by section 122(1) of the *Motor Vehicle Act*. Section (1) of the Regulation contains definitions. In particular:

1. In this regulation:

"attempting to close the distance" means attempting to close the distance between a peace officer's vehicle and another vehicle but does not include a pursuit;

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“pursuit” means the driving of an emergency vehicle by a peace officer while exercising the privileges granted by section 122 (1) of the *Motor Vehicle Act* for the purpose of apprehending another person who refuses to stop as directed by a peace officer and attempts to evade apprehension.

Sections 3 and 4 of the Regulation are also relevant:

3 (1) To engage in or continue a pursuit, a peace officer must

(a) have an emergency light and siren activated, and

(b) have reasonable grounds to believe that

(i) the driver or a passenger in the vehicle being or to be pursued has committed, is committing or is about to commit an offence, and

(ii) the seriousness of the offence and the need for immediate apprehension outweigh the risk to the safety of members of the public that may be created by the pursuit.

(2) In considering whether there are reasonable grounds under subsection (1) (b), the driver of the emergency vehicle must consider any pertinent factors, including the following, if relevant:

(a) the nature and circumstances of the suspected offence or incident;

(b) the risk of harm posed by the manner in which the emergency vehicle is being or is likely to be operated;

(c) the risk of harm posed by the distance, speed or length of time required or likely to be required to exercise the privileges;

(d) the nature, condition and use of the highway;

(e) the volume and nature of pedestrian or vehicular traffic that is, or might reasonably be expected to be, in the area.

(3) For the purposes of subsection (1) (b),

(a) the need for immediate apprehension will be low if

(i) the driver or a passenger in the vehicle pursued has not committed an indictable offence, or

(ii) identification or apprehension of the suspected offender may be achieved by other means at that or a later time,

(b) the greater the distance, speed or length of time required or likely to be required for the pursuit, the greater the risk to the safety of members of the public, and

(c) an attempt to evade apprehension is not a factor to be considered in determining the seriousness of the offence or the need for immediate apprehension.

4 (1) A peace officer operating an emergency vehicle for purposes other than pursuit may exercise the privileges granted by section 122 (1) of the *Motor Vehicle Act* if

(a) the peace officer has reasonable grounds to believe that the risk of harm to members of the public from the exercise of those privileges is less than the risk of harm to members of the public should those privileges not be exercised, and

(b) the peace officer operates the following emergency equipment, as applicable:

(i) in the exercise of privileges described in section 122 (1) (a) to (c) of the *Motor Vehicle Act*, an emergency light and siren;

(ii) in the exercise of privileges described in section 122 (1) (d) of the *Motor Vehicle Act*, an emergency light or an emergency light and siren.

(2) Having determined that there are reasonable grounds referred to in subsection (1) (a), the peace officer referred to in subsection (1) may, in the following circumstances, exercise any of the privileges granted by section 122 (1) of the *Motor Vehicle Act* without operating an emergency light and siren or by operating an emergency light alone:

(a) the peace officer is responding to an incident and has reasonable grounds to believe that an offence has been, is being or is about to be committed and that the risk of harm to members of the public entailed in operating an emergency siren or an emergency light and siren, as the case may be, outweighs the risk of harm to members of the public entailed in not operating them;

(b) the peace officer is engaged in the lawful execution of the peace officer's duty other than as described in paragraph (a) or section 3 and has reasonable grounds to believe that it is safe to operate the emergency vehicle without operating an emergency siren or an emergency light and siren, as the case may be.



(3) In considering whether there are reasonable grounds under subsection (1), (2) or (5) a peace officer must

(a) consider the factors described in section 3 (2), and

(b) weigh the degree of risk of harm to members of the public against the seriousness of the nature and circumstances of the suspected offence or incident.

(4) Subsection (2) does not apply if the peace officer must disregard a stop sign or approach or pass signs described in section 147 of the Motor Vehicle Act relating to schools and playgrounds.

(5) A peace officer operating an emergency vehicle in the circumstances set out in subsection (2) must stop at a red light and may then disregard the red light and proceed through the intersection if the peace officer has reasonable grounds to believe it is safe to do so without operating relevant emergency equipment.

(6) Factors which will increase the risk of harm to members of the public for purposes of subsections (1), (2) and (5) include

(a) attempting to close the distance between a peace officer's vehicle and another vehicle,

(b) if there is poor visibility,

(c) if there is pedestrian or other vehicular traffic on the highway, and

(d) if the peace officer must disregard a yield sign or pass through a crosswalk or uncontrolled intersection.

(7) For the purposes of subsection (2), the greater the distance, speed or length of time required or likely to be required in exercising the privileges granted by section 122 (1) of the Motor Vehicle Act, the greater the risk to the safety of members of the public.

(8) For the purposes of subsection (2), the risk of harm to members of the public must be considered to be substantially increased when a peace officer is attempting to close the distance if the other vehicle is not in the sight of the peace officer.

### **The Metro Vancouver Transit Police Policy**

As well, there is the *Metro Vancouver Transit Police Policy on Pursuits*. I shall not here reproduce the entirety of that 11-page document since it deals with pursuits, and in my

view, the conduct of the Member in this case did not amount to a pursuit. The policy sets out criteria for determining whether there is a police pursuit:

Police Pursuit ("Pursuit") – As defined in the *Emergency Vehicle Driving Regulation ("EVDR")*, "the driving of an emergency vehicle by a peace officer while exercising the privileges granted by section 122(1) of the *Motor Vehicle Act ("MVA")* for the purpose of apprehending another person who refuses to stop as directed by a peace officer and attempts to evade apprehension".

The determination of whether a Member is engaged in a Pursuit does not depend on whether or not the Member has activated their Emergency Equipment. Rather, a Member is considered to be in a "Pursuit" whenever all of the following are present:

- a. The Member is exercising the privileges in s. 122 of the *MVA*; and
- b. The Member follows a vehicle, attempts to Close the Distance to a vehicle, with the intent to stop it, or identify the vehicle or the driver; and
- c. The driver intentionally continues, takes evasive action or ignores the Member's direction to stop, in order to avoid apprehension.

NOTE: *When all of these elements are present and the Member has determined they are about to engage in a Pursuit but the Member immediately disengages at that point, the incident is not considered a Pursuit.*

The Policy also notes in section 10 the important difference between a pursuit and an attempt to close distance:

- 10. Attempting to Close the Distance between a police vehicle and another vehicle is not the same as a Pursuit.

### **The Final Investigation Report**

The Final Investigation Report is 39 pages long, and the evidence and records attached to it comprise several hundred more pages. I have read and considered the material, and I have viewed the photographs and video recordings referenced in the Final Investigation Report.

Although there is a CCTV video recording which shows (in the distance and at the corner of the screen) the crash of the two civilian vehicles, there is no video or other photographic evidence showing the manner in which the Member drove or the way he

conducted himself in attempting to stop the speeding AP vehicle. The most comprehensive account of the relevant events is the witness statement of the Member and that of the Member's Partner.

### **The Member's Interview**

On December 3, 2024 Sergeant [REDACTED] conducted an audio-recorded interview with Constable [REDACTED]. The Final Investigation Report contains the following summary of the Member's interview;

On July 26, 2022 around 2300 hours, Constable [REDACTED] was partnered with Constable [REDACTED] and driving an unmarked black [REDACTED] Police vehicle equipped with Police lights and siren;

Constable [REDACTED] was travelling North on the [REDACTED] Bridge entering New Westminster driving in the number 2 lane;

A white sedan was observed speeding past Constable [REDACTED] in the number 1 lane which almost side swiped Constable [REDACTED] Police vehicle;

Constable [REDACTED] estimated the sedan to be travelling at 90 km/hr;

Constable [REDACTED] obtained the license plate at approximately mid-span along the bridge;

Constable [REDACTED] queried the license plate and Constable [REDACTED] moved into the number 1 lane;

Constable [REDACTED] described the white sedan as a [REDACTED], and observed it veer into the on-coming lane as it travelled along the road which curved to the right as it entered New Westminster;

Constable [REDACTED] concluded that the [REDACTED] was speeding and he was further concerned that the [REDACTED] driver could be impaired;

Constable [REDACTED] next decision was to close the distance and find a location to conduct a safe traffic stop;

Constable [REDACTED] observed the [REDACTED] changing lanes multiple times to pass other slower vehicles although traffic was light;

This constant lane changing made it difficult for Constable [REDACTED] to get behind the [REDACTED];

Constable [REDACTED] caught up to the [REDACTED] when it stopped for a red light at [REDACTED] Avenue [REDACTED] Boulevard];

Constable [REDACTED] relayed to Constable [REDACTED] that the [REDACTED] was registered to a female, and a male associated of the vehicle had fled from Police before;

Constable [REDACTED] looked at the side view mirror of the driver side of the [REDACTED] and the partial reflection of the driver appeared to be an Asian or Indigenous male with a shaved head;

The traffic light cycled green and they began driving up a hill towards [REDACTED] Avenue, and Constable [REDACTED] determined this would be a safe location to conduct a traffic stop as there were multiple lanes and no vehicles in the way;

As they approach the top of the hill, Constable [REDACTED] activated his Police vehicle lights however, the [REDACTED] did not seem to react (no change in driving) and the speed was maintained;

The [REDACTED] then made a left hand turn to travel West on the [REDACTED] Avenue;

Constable [REDACTED] considered that maybe the [REDACTED]'s driver did not see his Police emergency lights because they are not as robust as in a marked Police vehicle or maybe the driver could be impaired and did not notice the Police lights and is just focused on what's in front of him;

Constable [REDACTED] then turned on his sirens by chirping them to get the attention of the driver of the [REDACTED];

Constable [REDACTED] reiterated the reason for the traffic stop was to assess the drivers sobriety and to address the speeding offences;

No sudden acceleration was observed as Constable [REDACTED] had experienced in other incidents of a vehicle taking off on him;

Constable [REDACTED] was confused as to why the [REDACTED] was not pulling over and why they haven't noticed the Police vehicle yet;

Constable [REDACTED] considered other occasions when a vehicle prolongs the time to pullover to conceal drugs, contraband, beer or weapons;

Constable [REDACTED] let the sirens run longer (3 to 4 cycles) to get the [REDACTED]'s attention;

At this point both Constable [REDACTED] and the [REDACTED] are going down a hill and both vehicles began to pick up speed;

Constable [REDACTED] recalled his speedometer read between 115 to 120 km/hr;

Constable [REDACTED] explained his general practise with speeding vehicles is to pace them for a certain distance to prove that it wasn't just a blip of



speed but was prolonged to determined the appropriate enforcement i.e. excessive speed, vehicle impoundment;

Constable [REDACTED] observed the [REDACTED] driving dangerously close to the on-coming lane to the point that other on-coming vehicles were shifting away from the [REDACTED] [and the center line]. Constable [REDACTED] concluded the [REDACTED] was now taking off;

At this point Constable [REDACTED] determined that it was not safe to pursuit nor was there an intention to pursuit the [REDACTED] for the risk to the public. Constable [REDACTED] turned off his emergency lights (sirens were already off) and pulled over to the side of the road;

Constable [REDACTED] stated the next thing that was going through his head was to broadcast the fail to stop, direction of travel, and a location of where he was;

Constable [REDACTED] common practise when a vehicle fails to stop is go over the radio with his call sign and broadcast "fail to stop" which he did;

When Constable [REDACTED] pulled over the last street sign he saw was [REDACTED] street. Constable [REDACTED] further tried to locate a house address for a more exact location;

When Constable [REDACTED] looked up, he could see tail lights of what he thought was the [REDACTED] spinning out and then stop;

Constable [REDACTED] broadcasted something like 'he thinks the [REDACTED] was just involved in an MVI';

Constable [REDACTED] initially thought maybe the [REDACTED] just hit a lamp post or something like that;

Constable [REDACTED] requested for EHS;

Constable [REDACTED] reiterated he had been fully stopped with all Police emergency lights and siren off;

Constable [REDACTED] made his way towards the intersection [REDACTED] Street [REDACTED] Avenue] and observed the driver get out of the [REDACTED] and say some (sic) like 'I'm sorry, I'm sorry';

Constable [REDACTED] grabbed the [REDACTED] driver's arm ("AP [REDACTED] which was slippery from blood and place him in handcuffs and advised he was under arrest and provided his 10(a), 10(b) and Charter warning;

Constable [REDACTED] escorted the AP [REDACTED] to a Sergeant's vehicle and then went to attend to the other vehicle involved in the crash;

Constable [REDACTED] ended up going to the hospital himself due to being in a traumatic state;

Constable [REDACTED] explained there was a clear line of sight from where he pulled over to where the collision occurred at [REDACTED] Street and [REDACTED] Avenue;

Constable [REDACTED] reiterated when the speeds began to speed up going down the hill, Constable [REDACTED] had been pacing the [REDACTED] for a approximately 5-6 "Mississippi's" [5-6 seconds];

Constable [REDACTED] did not engage in a pursuit and had no intention on pursuing the [REDACTED];

Constable [REDACTED] reason for broadcasting "fail to stop" was to notify dispatch and the road Sergeants that a vehicle had fled and by default he was not pursuing it.

### **The Statement of the Member's Partner**

The Final Investigation Report contains the following summary of a statement from the Member's Partner:

Cst [REDACTED] (passenger in police vehicle) stated Cst [REDACTED] (driver) and Cst [REDACTED] were in an unmarked black [REDACTED]. Both Cst [REDACTED] and Cst [REDACTED] were wearing plain clothes with no police markings.

Before 2300 hours, they were driving northbound over the [REDACTED] bridge from Surrey into New Westminster when the AP vehicle passed them. Cst [REDACTED] was on her cell phone when Cst [REDACTED] asked Cst [REDACTED] to run the licence plate of the AP vehicle. Cst [REDACTED] conducted both CPIC and PRIME enquiries on the vehicle and noted AP [REDACTED] owned the vehicle. Cst [REDACTED] noted two males attached to the vehicle and that the vehicle had engaged in recent flights from the police potentially from having contraband in the vehicle. [REDACTED] obtained a picture of one of the males and asked Cst [REDACTED] if it was the male driving. Cst [REDACTED] believed the male could be the driver of the AP vehicle [The male turned out not to be AP [REDACTED] Cst [REDACTED] looked at the AP vehicle intermittently as she was doing computer enquiries.

The police vehicle and the AP vehicle were driving at "pretty normal" speeds over the bridge. The AP vehicle accelerated driving up [REDACTED] and the police vehicle paced the AP vehicle. Cst [REDACTED] did not look at the speedometer but believed the AP was speeding relative to traffic speed. Both vehicles stopped at a red light on [REDACTED] Blvd at [REDACTED] Avenue.

When the traffic light turned green and as both vehicles approached [REDACTED] Avenue, Cst [REDACTED] turned on the emergency lights without sirens. Cst [REDACTED] noted the emergency lights on the police vehicle are not obvious in the same way as they are in a marked police vehicle. It appeared to Cst [REDACTED] the AP vehicle was not aware of the police vehicle behind them, nor did it appear to Cst [REDACTED] the AP vehicle was trying to flee at this time. Cst [REDACTED] stated the police vehicle was at a normal driving distance behind the AP vehicle at the time the police lights were turned on. To begin a traffic stop with just lights is normal practice and usually enough to pull over a vehicle.

Both vehicles turned southwest on [REDACTED] Avenue and AP vehicle gradually picked up speed. At this time Cst [REDACTED] blipped the sirens a few times. For approximately 5-10 seconds there was no change in the AP driver's behaviour. The police vehicle was directly behind the AP vehicle. After approximately 5-10 seconds, the AP vehicle began to accelerate quickly away from the police vehicle and close to the centre line of the roadway. At this point, Cst [REDACTED] turned the siren on fully.

One or two seconds after turning on the siren and when it was obvious the AP vehicle was not stopping, the police vehicle slowed down, deactivated the lights and sirens, and came to a stop around [REDACTED] Avenue. At the time the police vehicle disengaged, Cst [REDACTED] estimated the police vehicle was travelling at 90 to 100 km/h and the AP vehicle was pulling away from them.

The police vehicle stopped in the curb lane. "Cst [REDACTED] kept her gaze fixated forward on the fleeing [REDACTED] as Cst [REDACTED] slowed down, deactivated the police lights and sirens, and came to a stop roadside around 4th St and voiced the fail to stop over the police radio". While Cst [REDACTED] voiced over the radio the fail to stop, the traffic light at the collision location turned from green to red and the AP vehicle ran through the red light hitting a second vehicle. Cst [REDACTED] then voiced over the radio there was a crash and the police vehicle drove to the collision.

### **Civilian Witness Statement**

There is one civilian witness statement, that of [REDACTED]

[REDACTED] was driving in the number one lane southwest bound on [REDACTED] Avenue preparing to turn south (left) onto [REDACTED] Street [one block prior to the collision location]. A white vehicle [AP vehicle] passed him in the number two lane. [REDACTED] could feel his vehicle shake and estimated AP vehicle was doing 150 km/h. [REDACTED] saw AP vehicle collide with a grey vehicle at



the intersection of [REDACTED] Avenue and [REDACTED] Street [REDACTED] when interviewed by IIO investigators, did not see any emergency lights or hear the siren of a police vehicle when the AP vehicle passed him; he provided a disclaimer his attention was fully on the AP vehicle and the collision [REDACTED] attended the scene of the collision and remembered a black unmarked police vehicle likely the police vehicle with its emergency equipment activated at the scene but cannot remember if the police vehicle arrived a few seconds before or after he did.

### **GPS And Technical Analysis of Speed**

The Final Investigation Report contains a review of the IIO Narrative Report which included a summary of the police vehicle's Mobile Data Terminal ("MDT") Global Positioning System ("GPS") data written as follows:

#### MDT/GPS DATA of Police Vehicle

Note: The MDT terminal did not have the ability to detect activation of emergency lights or siren. GPS was able to detect speed and position of the police vehicle.

Note: The speed limit on all roadways in this investigation is 50 km/h.

GPS Analysis showed:

*Stage 1: Northwest bound over [REDACTED] Bridge to Red light at [REDACTED] Avenue on [REDACTED] Blvd. Distance = approximately 2 km.*

The police vehicle drove Northbound on the [REDACTED] Bridge at 59 km/h at 22:59:02 hours. [This is when Cst [REDACTED] states she was first made aware of AP vehicle].

The police vehicle slowed to successive speeds of 39, 40, 44 km/h before accelerating to approximately 90 km/h at approximately 22:59:22.

The police vehicle decelerated to approximately 79 km/h around 22:59:24.

From approximately 22:59:24 to 23:00:22 hours, the police vehicle's speed fluctuated from between 79 km/h to a momentary high of 98 km/hr before coming to a complete stop at 23:00:30 hours at [REDACTED] Blvd and [REDACTED] Avenue.

*Stage 2: Northwest bound [REDACTED] Blvd from Red Light at [REDACTED] Avenue to turn onto Southwest [REDACTED] Avenue. Distance = approximately 0.4 km.*



The police vehicle stopped at [REDACTED] Blvd and [REDACTED] Avenue from 23:00:30 - 23:01:00 hours (30 sec). [This likely indicates the police vehicle and AP vehicle stopped appropriately for the red light suggesting no potential pursuit type behaviour at this point].

At 23:01:00 hours the police vehicle accelerated to 81 km/h at approximately 23:01:10 hours, decelerating to approximately 67 km/h at approximately 23:01:24 hours, followed by a rapid deceleration to approximately 21 km/h at approximately 23:01:28 hours. [This likely indicates the police vehicle slowing down to turn from Northwest [REDACTED] Blvd to Southwest [REDACTED] Avenue].

*Stage 3: Southwest [REDACTED] Avenue from [REDACTED] Boulevard until beginning of deceleration to stop. Distance = approximately 320 m to 789 m; see investigative details.*

At 23:01:28 hours, the police vehicle accelerated from 21 km/h to a top speed of 124 km/h at 23:01:42 hours [a distance of approximately 320 m from the intersection of [REDACTED] Blvd and [REDACTED] Avenue].

The police vehicle decelerated to 113 km/h at 23:01:55 hours [a distance of approximately 789 m from the intersection of [REDACTED] Blvd and [REDACTED] Avenue].

At 23:01:55 hours, the police vehicle rapidly decelerated to a speed of approximately 7 km/h at 23:02:03 and came to a complete stop by 23:02:09 hours at between [REDACTED] St and [REDACTED] Street.

#### SPEED OF AP VEHICLE

ICAR's attended the scene and utilized three sources of information to determine the speed of the AP vehicle:

*Event Data Recorder.* The Event Data Recorder provides speeds of the AP vehicle from five seconds prior to the collision. The Event Data Recorder showed the AP vehicle travelling within a speed range of:

164-169 km/h five seconds prior to the collision.

118-122 km/h at the time of the collision.

Brakes were applied to the AP vehicle 2.5 seconds prior to the collision.

*CCTV analysis:* showed the AP vehicle was driving a minimum average of 137 km/h over a distance of 30.54 m when it entered the crosswalk of [REDACTED] Street [the collision site].

*Crash Analysis:* conducted by an independent engineering firm indicated a speed range between 154.2 and 191 km/h.

### **Analysis – Allegation of Neglect of Duty**

At the time of the incident, the Member was acting in his capacity as a police officer, and as such, he had a duty to preserve the peace, to prevent crime, to protect life and property, to enforce the law, and to apprehend offenders. He was attempting to carry out these duties when, while driving an unmarked police vehicle, he observed and started following the speeding AP vehicle. The present allegation of Neglect of Duty relates to the manner in which he did so. It is alleged that he neglected, without good or sufficient cause, to carry out the duties imposed on him in these circumstances by section 122 of the *Motor Vehicle Act* (MVA), the *BC Emergency Vehicle Driving Regulation* (EVDR) and the *Metro Vancouver Transit Police Policy* (MVTP) governing emergency driving.

In analyzing this question, it is useful to divide the incident into three segments or stages, as did the IIO Narrative Report.

Stage 1 covers the segment from when the Member and his partner first observed the AP vehicle on the [REDACTED] Bridge until they were stopped for a red light at the intersection of [REDACTED] Avenue and [REDACTED] Blvd. This is a distance of approximately 2 kilometres.

Stage 2 covers the segment from the red light, then Northbound on [REDACTED] Blvd, then turning left onto Southwest [REDACTED] Avenue. This is a distance of approximately 0.4 kilometres.

Stage 3 covers the segment from the left turn off of [REDACTED] Blvd onto Southwest [REDACTED] Avenue until the police vehicle decelerated and stopped on [REDACTED] Avenue. This is a distance of approximately 320 to 789 meters.

What were the Member's duties, and did he neglect those duties, during each of these three stages?

#### **Stage 1**

According to the Member's interview, at around 23:00 on July 26, 2022, he was driving with his partner going northbound on the [REDACTED] Bridge when the AP vehicle, a white [REDACTED], sped past and almost side swiped them. He estimated the AP vehicle to be travelling at 90 km/h. His Partner queried the licence plate number. He observed the AP vehicle veer into the on-coming lane, and he was concerned that the driver might be impaired. He decided to close the distance and find a safe location to conduct a traffic stop. Although the traffic was light, the AP vehicle changed lanes multiple times to pass

other slower vehicles, and this made it difficult for the Member to get behind the AP vehicle.

The statement of the Member's Partner adds that she conducted CPIC and PRIME checks on the licence plate. She learned the name of the registered owner and noted two males attached to the vehicle and that the vehicle had engaged in recent flights from the police. According to the Member's Partner, the police vehicle "paced" the AP vehicle as it accelerated up [REDACTED] Blvd. Both vehicles then stopped at the red light on [REDACTED] Blvd and [REDACTED] Avenue.

The GPS analysis showed the speed of the police vehicle varying over a period of about 90 seconds from 59 km/h to around 40 km/h, then accelerating to about 90 km/h, then fluctuating from 79 km/h to a momentary high of 98 km/h before coming to a complete stop at the red light.

There is no evidence that the Member's driving was in any way dangerous apart from speed. He was, however, exceeding the speed limit of 50 km/h. This was justified under the circumstances by s. 122 of the *Motor Vehicle Act*, having regard to the nature, condition and use of the highway, the light amount of traffic, and the Member's legitimate concern that the AP vehicle was not only speeding but also that the driver could be impaired.

This was not a pursuit as defined in the *BC Emergency Vehicle Driving Regulation*, since there was at this stage no indication that the driver of the AP vehicle was refusing to stop as directed. Section 4 of the *Regulation* provides that the Member could still exercise the privileges granted by section 122 of the *Motor Vehicle Act* under these circumstances provided he has reasonable grounds to believe that the risk of harm to members of the public from exercising the privileges is less than if he does not exercise them. In these circumstances, he should use his emergency lights and/or siren unless he has reasonable grounds to believe that it is safe to operate the emergency vehicle without them. Clearly in this case the Member believed, on reasonable grounds, that it was safe for him to exceed the speed limit without using his emergency lights or siren.

There is no evidence that the Member failed to comply with any of these requirements, and there is no evidence that the Member's conduct involved a neglect of duty during Stage 1.

## Stage 2

The Member said in his interview that he caught up to the [REDACTED] (the AP vehicle) when it stopped for the red light at [REDACTED] Avenue and [REDACTED] Blvd. The Member's Partner told him that the [REDACTED] was registered to a female and that a male associated with the vehicle had previously fled from the police. He looked at the partial reflection of the driver in the side view mirror, and the driver appeared to be a male with a shaved head. The light then cycled green, and as they began driving up the hill towards [REDACTED] Avenue,



he determined that this would be a safe location to conduct a traffic stop as there were multiple lanes and no vehicles in the way.

The Member said that he activated his Police vehicle lights, but the [REDACTED] did not seem to react. There was no change in driving and the speed was maintained. The [REDACTED] then turned left onto [REDACTED] Avenue. The Member thought that perhaps the driver had not seen the Police emergency lights because the lights are not as robust in an unmarked vehicle like the one he was driving.

The Member's Partner also thought this and said it did not appear that the [REDACTED] was attempting to flee at this time.

Both vehicles then turned left onto [REDACTED] Avenue.

There was nothing untoward in the conduct of the Member during Stage 2, but the Police Complaint Commissioner in his letter of Appointment remarked that "there was an opportunity to initiate a traffic stop when the vehicles were stopped at the red light", and he questioned whether the failure to initiate a traffic stop there was "consistent with the objective standard of what a reasonable officer would have done in the circumstances."

With respect, I do not share that concern, as it seems to be coloured by what we now know occurred subsequently. If the Member had known that the driver of the AP vehicle was not going to stop in response to the activation of the Police lights and siren and that he would instead flee at a high rate of speed, then one could speculate that a traffic stop at the red light might have been advisable, but the Member had no way of knowing this at the time the two vehicles were stopped at the red light. At that point in time there was no indication that the driver of the AP vehicle had an intention to flee. Accordingly, it was reasonable and indeed responsible for the Member to evaluate where would be the best and safest location to initiate a traffic stop. In the circumstances, the Member decided that the best place would be after the traffic light where there were multiple lanes and no vehicles in the way. In my view, that decision was objectively consistent with what a reasonable officer would have done in the circumstances.

### **Stage 3**

The Member said in his interview that when the AP vehicle failed to respond to the Police emergency lights, he chirped his sirens. When there was no response, he let the sirens run for three or four cycles. At that point, they were going down hill and both vehicles began to pick up speed. The Member said his speedometer read between 115 to 120 km/hr. He explained that his general practice with speeding vehicles was to pace them for a certain distance to prove it wasn't just a blip of speed. He then observed the AP vehicle driving dangerously close to the on-coming lane, and he concluded that it was now "taking off". At that point, he determined that it was not safe to pursue, nor was there an intention to pursue for risk to the public, and he turned off his emergency



lights (the sirens were off already) and he pulled over to the side of the road, where he broadcast a "fail to stop". He said the last street sign he saw was at [REDACTED] Street. He looked up and saw the tail lights of the Nissan spinning out, and he broadcast that "he thinks the [REDACTED] was just involved in an MVI."

The accident occurred at the intersection of [REDACTED] Avenue and [REDACTED] Street.

The Member's Partner said that "one or two seconds after turning on the siren and when it was obvious the AP vehicle was not stopping, the police vehicle slowed down, deactivated the lights and sirens, and came to a stop around [REDACTED] Avenue." She said that at the time the police vehicle was disengaged, it was travelling at 90 to 100 km/h and the AP vehicle was pulling away from them. According to the Member's Partner, the police vehicle came to a stop roadside around [REDACTED] Street.

The *BC Emergency Vehicle Driving Regulation* sets out specific duties when the police are engaged in a pursuit, which is defined as "the driving of an emergency vehicle by a peace officer while exercising the privileges granted by section 122 (1) of the *Motor Vehicle Act* for the purpose of apprehending another person who refuses to stop as directed by a peace officer and attempts to evade apprehension".

Up to the moment that the AP vehicle "took off", the Member did not have reason to believe that the driver of the vehicle would refuse to stop as directed and that he would attempt to evade apprehension. This only became apparent when the AP vehicle "took off" after the Member operated his emergency lights and siren. As soon as that happened, the Member slowed his vehicle, stopped at the side of the road, and broadcast the failure to stop. Under these circumstances the Member never engaged in a "pursuit" as defined in the *BC Emergency Vehicle Driving Regulation*.

The Member had been exceeding the speed limit just prior to the time when the [REDACTED] "took off". The GPS speed analysis showed the police vehicle to have accelerated along [REDACTED] Avenue from 21 km/h to a top speed of 124 km/h, then decelerated to 113 km/h followed by rapid deceleration and a complete stop between [REDACTED] Street and [REDACTED] Street.

Section 122 of the *Motor Vehicle Act* permitted the Member to exceed the speed limit provided he drove with due regard for safety, having regard to all the circumstances. From viewing the CCTV video of [REDACTED] Avenue at the collision site, it is apparent that traffic was relatively light, visibility and weather conditions were good, and the roadway was clear and dry. It was late at night, and this was a straight stretch of road. I am satisfied that the Member properly balanced those considerations against the danger posed to the public by the speeding [REDACTED], in exercising the privilege under section 122 of the *Motor Vehicle Act*.

There is no evidence to contradict the account of events narrated by the Member and the Member's Partner. Their account is credible. It aligns with the other independent evidence. In these circumstances, the available evidence is that the Member complied

with the requirements of all the relevant laws, regulations, and policy. There is no evidence that he did not.

### **Conclusion**

Upon my review of the Final Investigation Report and the evidence and records referenced in it, I consider that the evidence does not support the allegation of misconduct by Neglect of Duty against the Member at any stage of this incident.

Pursuant to section 117(11) of the *Police Act*, this decision is not open to question or review by a court on any ground and is final and conclusive.

Dated at Vancouver, British Columbia this 20<sup>th</sup> day of May, 2025.

A handwritten signature in black ink, appearing to read 'W. Ehrcke', with a long, sweeping horizontal stroke extending to the right.

Hon. William Ehrcke,  
Retired Judge of the Supreme Court of British Columbia, Adjudicator