

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996 C. 367  
AND  
IN THE MATTER OF A DISCIPLINE HEARING INTO  
ALLEGATIONS OF MISCONDUCT AGAINST  
CONSTABLE [REDACTED]  
DISCIPLINE AUTHORITY'S REASONS ON DISCIPLINARY OR CORRECTIVE  
MEASURES  
(Section 128 *Police Act* -- Supplement to Form 4)

To: Constable [REDACTED] (Former Member)  
And to: Mr. Prabhu Rajan  
Police Complaint Commissioner

**Introduction – The Misconduct**

On August 25, 2025, I rendered a decision under section 125 of the *Police Act*, finding that the following allegation of misconduct had been proven against Constable [REDACTED] [REDACTED] (hereinafter the "Former Member"), formerly of the Saanich Police Department:

That on or about January 1, 2024 Constable [REDACTED] committed neglect of duty pursuant to section 77(3)(m)(ii) of the *Police Act*, by not facilitating access to counsel for Mr. [REDACTED] (the "Complainant").

"Misconduct" is defined in section 77(1) of the *Police Act* as including a disciplinary breach of public trust under section 77(3). Section 77(3)(m)(ii) provides:

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:

...

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

### **Background And History of the Proceedings**

The allegation of misconduct arose out of the arrest of the Complainant on January 1, 2024 for being intoxicated in a public place. After his arrest, the Complainant was held for more than seven hours in Saanich Police Department cells until he was sufficiently sober to be released. No charges were laid against him.

The arrest occurred following a civilian report to the police that a man, later identified as the Complainant, had entered a convenience store in Saanich and exposed his penis to customers and staff. A short time later, another civilian called to report a similarly described male holding an alcoholic beverage and screaming randomly at people. Another civilian provided dispatch with information that the same man said he had a gun.

Officers attended to the area and located the man, who was later confirmed to be the Complainant. These officers included the Former Member, as well as Cst. [REDACTED] [REDACTED] (Cst. [REDACTED] and Cst. [REDACTED] (Cst. [REDACTED]

Cst. [REDACTED] informed the Complainant he was under arrest for being in a State of Intoxication in a Public Place. Upon placing his hands on the Complainant to place him in handcuffs, a physical struggle ensued.

The Complainant was placed into handcuffs, and at around 10:27 p.m. the Former Member read him his rights under section 10(b) of the *Canadian Charter of Rights and Freedoms*. The Complainant was transported to the Saanich Police Department and lodged in a cell. He was subsequently released at about 5:50 a.m. the next morning, January 2, 2024.

On January 4, 2024, the Complainant attended hospital, where he was diagnosed with a left-elbow coronoid fracture.

On January 14, 2024, the Complainant filed a written complaint with the Office of the Police Commissioner (OPCC), alleging, among other things, that he had been denied his right to contact his lawyer. He also said that he requested medical attention, but that

this request was ignored, leaving him to suffer in pain for several hours while he was in detention.

Following an investigation by Sergeant [REDACTED] ("The Investigator") the Police Complaint Commissioner appointed me, as a retired judge, to conduct a review of the Final Investigation Report and to make a decision on the matter pursuant to section 117 of the *Police Act*

In a Decision dated February 5, 2025, I found that the evidence appeared sufficient to substantiate the allegation of neglect of duty against the Former Member for not facilitating access to counsel for the Complainant, and against Cst. [REDACTED] for not facilitating access to medical care for the Complainant.

The allegation against Cst. [REDACTED] was resolved following a pre-hearing conference under section 120(6) of the *Police Act*, but the allegation against the Former Member was not, and accordingly, that matter was set for a Discipline Proceeding.

At the Discipline Proceeding held on August 13, 2025, the Former Member failed to attend, notwithstanding that he had been notified. Accordingly, the Discipline Proceeding proceeded in his absence pursuant to section 130 of the *Police Act*, which provides:

**130** If a member or former member whose conduct is the subject of a discipline proceeding fails to attend or remain in attendance at the discipline proceeding and the discipline authority is satisfied that the member or former member has been served with notice of the discipline proceeding, the discipline authority may

- (a) proceed with the discipline proceeding in the absence of the member or former member,
- (b) draw an adverse inference from that failure, and
- (c) make any finding and propose any disciplinary or corrective measure that the discipline authority considers appropriate.

At the Discipline Proceeding, the allegation of misconduct against the Former Member was read out, and there was a deemed denial of the allegation.

The Investigator entered into evidence as Exhibit 1 a computer USB Drive containing his Final Investigation Report and the materials referred to therein.

Written submissions of the Complainant were marked as Exhibit 2.

No other witnesses were called to testify at the Discipline Proceeding. No written or oral submissions were received.

Pursuant to section 125 of the *Police Act*, I concluded that the allegation had been proven.

Notice of the decision was given to the Former Member, and pursuant to section 125(2) of the *Police Act*, he had the opportunity to make submissions as to the appropriate disciplinary or corrective measures within 10 days. No such submissions have been received, and it is now my responsibility, under section 126(1) of the *Police Act* to propose appropriate disciplinary or corrective measures.

### **Legislative Framework**

Section 126(1) of the *Police Act* deals with the imposition of disciplinary or corrective measures in relation to members, and it sets out the possible measures:

**126** (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or the member's 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 the member's conduct.

Section 126(2) of the *Police Act* lists certain aggravating and mitigating circumstances to be considered:

- (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, the member's 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 the member's 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.

Section 126(3) of the *Police Act* provides that a corrective and educative approach should normally take precedence:

(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 127 of the *Police Act* provides that when dealing with someone who is no longer a member, the provisions of section 126 must still be applied:

**127** (1) After finding that the conduct of a former member is misconduct and hearing submissions, if any, from the former member or the former member's agent or legal counsel, the discipline authority must apply the provisions of section 126 (2) and (3) [*imposition of disciplinary or corrective measures*] in respect of the matter as if the former member had continued to be a member, then determine what disciplinary or corrective measures the discipline authority would have taken under section 126 (1) if the former member had continued to be a member.

(2) The disciplinary or corrective measures determined in accordance with subsection (1) of this section are the disciplinary or corrective measures to be proposed by the discipline authority for the purposes of section 128 (1) (a) [*disciplinary disposition record*].

Section 128 of the *Police Act* deals with the disciplinary disposition record:

**128** (1) Unless the police complaint commissioner grants an extension under subsection (2) of this section, within 10 business days after hearing submissions under section 125 (1) (d) [*conclusion of discipline proceeding*], the discipline authority must

- (a) propose disciplinary or corrective measures to be taken for each allegation of misconduct found to be proven,
- (b) record the date and the proposed disciplinary or corrective measures in a disposition record in the prescribed form,
- (c) include in the disposition record any aggravating or mitigating factors in the case,
- (d) serve a copy of the disposition record on the member or former member concerned, together with notification of the effect of sections 133 (6) [*review of discipline proceeding*] and 136 (1) [*time limit for requesting public hearing or review on the record*], and
- (e) provide another copy of the disposition record to the police complaint commissioner, together with the entire unedited record of the proceedings.

(2) The police complaint commissioner may grant an extension under subsection (1) if the police complaint commissioner considers that there are good reasons for doing so and it is not contrary to the public interest.

(3) After receiving the records referred to in subsection (1) (e), the police complaint commissioner may order that the discipline authority provide to the police complaint commissioner further reasons justifying the particular disciplinary or corrective measures proposed.

(4) A discipline authority must comply with an order under subsection (3).

## Analysis

In my section 117 decision dated February 5, 2025, I suggested that the range of disciplinary or corrective measures to be considered under section 126(1) of the *Police Act* includes one or more of the following:

- To require the member to take training,
- To reprimand the member verbally or in writing for this conduct,
- To provide the member with advice as to his conduct.

I remain of that view.

As will be apparent, this case is unusual because I do not have the benefit of either evidence or submissions on behalf of the Former Member. This makes it difficult to evaluate the aggravating and mitigating circumstances as enumerated in section 126 of the *Police Act*. A further difficulty is that the Former Member is no longer a member of the Saanich Police Department, and I have no evidence of his current employment.

The first factor listed in section 126 is the seriousness of the misconduct. The failure to facilitate access to counsel in this case was an infringement of the Complainant's right under section 10(b) of the *Canadian Charter of Rights and Freedoms*. That is always a serious matter, especially since the Complainant spent over seven hours in custody, during which time he did not have the benefit of counsel's advice about the propriety of his custodial status. On the other hand, the evidence is that the Complainant was extremely intoxicated, and it may have been difficult for him to communicate effectively with counsel until he had sobered up.

The second factor is the Former Member's record of employment and service record of discipline. I have little information in this regard. The materials in the Final Investigation Report indicate that he enlisted with the Saanich Police on January 4, 2022, and had subsequently resigned. I have no information about his current employment. The record does not list any commendations or awards, but neither does it list any record of discipline.

The third factor is the impact of proposed disciplinary or corrective measures on the member and on the member's family and career. This is impossible to evaluate in the absence of any information about his current employment or circumstances.

Next is the likelihood of future misconduct by the member. Again, I have no basis for making such an evaluation.

The next factor is whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence. I have no basis for finding that he either does or does not accept responsibility.

Next is 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. I would simply note here that the circumstances leading to the Complainant's detention were his extreme intoxication and belligerence, and it appears that not only the Former Member, but also the other members involved, had no well-considered strategy for facilitating access to counsel while a detainee was in such a state.

Next, is the range of disciplinary or corrective measures taken in similar circumstances. I have consulted the OPCC Discipline Decisions Digest, and it appears that the measures taken in other cases involving denial of access to counsel include advice as to conduct, training or retraining, an oral or written reprimand, and in one instance, a one-day suspension.

Finally, I must consider any other aggravating or mitigating factors. In this regard, I note that the Complainant made a written submission, which was filed as Exhibit 2 on the Discipline Proceeding. The gist of his submission was that he was more concerned about the conduct of the officer who failed to respond to his medical needs when he was in custody, and he was less concerned about the conduct of the Former Member. Indeed, he wrote that the Former Member "acted appropriately due to the situation" and that in general he found "his conduct to be correct under the circumstances."

### **Conclusion**

In all the circumstances, considering the factors set out in section 126 of the *Police Act*, and applying those provisions as if the Former Member had continued to be a member (as required by section 127 of the *Police Act*), I propose the following disciplinary or corrective measures: A written reprimand.

Dated at Vancouver, British Columbia this 22nd day of September, 2025.



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