

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

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF DISCREDITABLE CONDUCT AGAINST
SPECIAL MUNICIPAL CONSTABLE [REDACTED]

NOTICE OF DECISION

To: Special Municipal Constable [REDACTED]
c/o Victoria Police Department
Professional Standards Section

And to: Chief Constable Del Manak
c/o Victoria Police Department
Professional Standards Section

And to: Inspector [REDACTED] (Discipline Authority)
c/o Victoria Police Department
Professional Standards Section

And to: Sgt. [REDACTED] (Investigator)
c/o Victoria Police Department
Professional Standards Section

And to Prabhu Rajan
Police Complaint Commissioner

Introduction

This is a review under section 117 of the *Police Act*, R.S.B.C. 1996, c. 367 (the *Act*) of an allegation of discreditable conduct by Special Municipal Constable [REDACTED] (the SMC) of the Victoria Police Department (the VicPD) while he was off duty. The allegation arises out of an incident on November 1, 2024, when a Saanich Police Department member (SPD member) stopped a vehicle driven by the SMC. At the traffic stop the SPD member administered two tests on Approved Screening Devices (ASD) for impaired driving to the SMC. The SMC blew a fail on both tests.

An investigation into the incident was ordered on December 5, 2024, by the Police Complaint Commissioner after receiving a request from the VicPD.

In a decision pursuant to section 112 of the *Act*, the Discipline Authority identified three separate allegations of discreditable conduct pursuant to subsection 77(3)(h) of the *Act*.

1. Operating a vehicle while impaired;
2. Providing a false or misleading statement to the SPD member; and
3. Disclosing his employment status to the SPD member.

The Discipline Authority found that allegations 1 and 3 appeared to be substantiated. However, the Discipline Authority found that the SMC allegedly providing a false or misleading statement to the SPD member did not appear to be substantiated.

The Police Complaint Commissioner determined that a review under section 117 of the *Act* is required regarding the second allegation.

It should be noted that for the purposes of this section 117 review I have not been provided with a copy of the Discipline Authority's decision. The only information I have about the decision is the summary that the Discipline Authority found that the SMC allegedly providing a false or misleading statement to the SPD member did not appear to be substantiated.

Circumstances of the Incident

The circumstances giving rise to the allegations of discreditable conduct are set out in the Final Investigation Report (the FIR) and the attached documents and records.

On November 1, 2024, at approximately 2230 hours, the SPD member observed a vehicle with a “N” sign on the back leave the parking lot of a pub. The SPD member was aware of the restriction on “N” drivers that they have no alcohol in their system while driving. Having seen the vehicle leave the parking lot of a pub, the SPD member thought the driver may have consumed alcohol and decided to follow the vehicle. The SPD member observed the vehicle fail to stop at one stop sign and roll through another, as result of which he conducted a traffic stop.

During the traffic stop, the driver (the SMC) stated he did not have his driver’s licence and produced a government issued identification card. During his interactions with the SMC, the SPD member observed the SMC was slurring and formed a reasonable suspicion he had been operating the vehicle while impaired.

The SPD member asked the SMC when he had his last drink and the SMC replied he had “one drink a couple of hours ago”. The SMC stated he had no alcohol in the last 15 minutes, including mouth wash or gum.

The SPD member read the mandatory ASD Demand to the SMC. According to the SPD member the SMC first stated he would not provide a sample. The SMC’s recollection is that he asked the SPD member what would happen if he refused to blow rather than refusing to provide a sample. They agree that the SPD member explained that if the SMC refused a lawful demand to provide a sample of his breath he would be arrested for Refusal. The SMC said he understood and then advised he would provide a sample.

The SPD member administered two ASD tests on different devices, both of which resulted in a fail. After the second fail, the SPD member advised the SMC that he was prohibited from driving for 90 days and his vehicle would be impounded for 30 days. The vehicle was impounded, and the SMC and his passenger were picked up by a family member.

In an interview with the Investigator, the SMC admitted the information he gave to the SPD member about his consumption of alcohol was incorrect.

Statutory Provisions

Section 117(1) of the *Act* provides:

If, on review of a discipline authority's decision under section 112 (4) [discipline authority to review final investigation report and give early notice of next steps] or 116 (4) [discipline authority to review supplementary report and give notice of next steps] that conduct of a member or former member does not constitute misconduct, the police complaint commissioner considers that there is a reasonable basis to believe that the decision is incorrect, the police complaint commissioner may, in accordance with section 177.2 [list and appointment of retired judges], appoint a retired judge 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 a 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 77 of the *Act* defines misconduct. The relevant portions of section 77 provide:

s. 77(1) (1) In this Part, "misconduct" means

...

(b) conduct that constitutes

...

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

s. 77(3)(h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

- (i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;

(ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act;

(iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada;

The allegation of discreditable conduct on the part of the SMC is not enumerated in subsection 77(3)(h). The subsection makes it clear that the examples of misconduct enumerated are not limitations. Rather the issue is whether the member knows, or ought to have known, that his or her conduct would be likely to bring discredit on the police department. The test is both objective, (i.e., did the member know), and subjective, (i.e., ought the member to have known). It is not necessary that the conduct would bring or has brought discredit on the department. It is sufficient that the conduct would be likely to bring discredit to the department.

The following comments from *Mancini v. Constable Martin Courage*, OCCPS #04-09, the Ontario Civilian Commission on Police Services have been referred to in decisions by disciplinary authorities in B.C.:

The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.

While the comments are not binding, I agree with other disciplinary authorities that the test is fairly stated and appropriate in the context of the *Act*.

The circumstances and the conduct in question must be measured against the reasonable expectation of the community, i.e. what conclusions would reasonable people in the community draw from an objective analysis of the evidence.

Analysis

The issue is whether the SMC engaged in disreputable conduct by allegedly providing a false or misleading statement to the SPD member appears to be substantiated. I have

reviewed the FIR and its attachments, and the relevant portions of the *Act*, to determine whether the allegation of disreputable conduct against the SMC regarding the statement appears to be substantiated on the balance of probabilities.

There is no issue that when the SMC was asked when his last drink was by the SPD member at the traffic stop, he stated that he had “one drink a couple of hours ago”. The evidence is that at no time during the traffic stop did he change the answer or admit to consuming more alcohol.

The Investigator interviewed the SMC on April 7, 2025. I was provided with a written summary and recording of the interview. When the SMC was asked about his statement to the SPD member that he only had one drink a couple of hours ago, he agreed that was his response when asked about his alcohol consumption. The SMC went on to state he did not know why he said he had only one drink a couple of hours ago but “at the time it seemed like the right thing to say”.

In the interview, the SMC stated he met a friend at the pub that evening and had a couple of beers. When asked what he meant by a couple and whether he could give a rough estimate, he stated “probably 3ish”. The SMC said he had consumed his last drink approximately a half hour before the traffic stop.

The purpose of the SPD member’s initial questions to the SMC about his consumption of alcohol was to investigate and determine whether he had consumed alcohol and whether an ASD test should be administered.

The question of whether an officer providing false or misleading information to another officer when he is the subject of investigation appears to constitute discreditable conduct has been considered in earlier reviews.

Retired judge Hon. Ian Pitfield wrote the following in a decision in 2015:

It is likely the case that many ordinary citizens, when asked about the consumption of alcohol at a roadblock will lie about their recent consumption. There is no sanction as regards the lie itself where a member of the general public is concerned. The same cannot be said of police officers subject to the strictures of the *Police Act* and subject to sanction should they commit a disciplinary breach of public trust defined by s. 77 of the *Act* to include discreditable conduct.

With good reason, the public places considerable trust in police forces to address and deter driving under the influence of alcohol. Moreover, the public can reasonably expect individual officers to be truthful in their dealings with other officers, whatever the circumstances, and whether on or off duty. It is unlikely that the public would condone the conduct of an officer who lies to another officer for the purpose of avoiding or attempting to avoid the requirement that he or she submit to an ASD test at a roadblock. Knowledge that an officer had engaged in conduct of that kind would be likely to bring discredit upon the police department of which the officer is a member.

I agree with these comments.

The SMC was told the main reason the SPD member pulled him over was that he had an N on his vehicle and was leaving a drinking establishment. It would have been apparent to the SMC in the circumstances that the SPD member's initial question about his alcohol consumption was to determine if there was a reasonable suspicion that the SMC was driving while impaired. Although this was not a roadblock, it is unlikely a member of the public would condone the conduct of an officer who lies to another officer at a traffic stop when the purpose of the stop is to determine whether the officer is operating his vehicle while impaired.

The evidence that the SMC's answer when asked about his alcohol consumption was false or misleading is not in dispute. The SMC said he thought his answer "one drink a couple of hours ago" was the right thing to say at the time. However, he agreed that he was not so intoxicated at the time of the traffic stop that his memory or recollection was impaired. The SMC was stopped after leaving a pub and based on his interview, knew he had consumed more than one drink, and his last drink had been about a half hour before the traffic stop. It is reasonable to infer that the SMC's response to the SPD member's question about his alcohol consumption was an attempt to avoid further investigation into whether he was operating the vehicle while impaired.

Having reviewed the FIR and the attached documents and records, I conclude the evidence appears sufficient to substantiate the allegation of discreditable conduct on the part of the SMC in providing a false or misleading statement to the SPD member.

NEXT STEPS

I am giving notice pursuant to subsections 117(7) and (8) of the *Act* as follows:

- For the reasons set out, I am of the view that the evidence referenced in the FIR and attachments appears sufficient to substantiate the allegation of discreditable conduct on the part of the SMC by providing a false or misleading statement to the SPD member.
- In the circumstances, I am of the view it is appropriate to offer a prehearing conference pursuant to section 120 of the *Act*.
- The range of disciplinary or corrective measures being considered include:
 - suspension without pay for not more than 30 scheduled working days.
 - requiring the officer to undertake specified counselling or treatment,
 - requiring the officer to participate in a specified programme or activity,
 - reprimanding the member, in writing or verbally.
 - giving the member advice as to his conduct.

As I have determined that the evidence appears sufficient to substantiate the allegation, pursuant to section 117(9) of the *Act*, I become the disciplinary authority in this case.

Dated at West Vancouver, B.C. August 8, 2025

Laura B Gerow

Hon. Laura B Gerow