

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] AND CONSTABLE [REDACTED] OF THE
SURREY POLICE SERVICE

NOTICE OF DECISION PURSUANT TO S. 117 OF THE *POLICE ACT*

The Honourable Elizabeth Bennett, K.C., Adjudicator

June 1, 2026

TO: [REDACTED]
Complainant

And TO: Constable [REDACTED]
Constable [REDACTED]
Surrey Police Service

AND TO: Chief Constable Norm Lipinski
Surrey Police Service

AND TO: Inspector [REDACTED]
Surrey Police Service

AND TO: Sergeant [REDACTED]
Surrey Police Service

AND TO: Prabhu Rajan
Police Complaint Commissioner

AND TO: Xwopokton (Mr. Harley Chappell)
Chair, Surrey Police Board

DECISION OF ADJUDICATOR BENNETT:**INTRODUCTION**

[1] On March 5, 2025, Mr. [REDACTED] (“A.B.”), was driving his vehicle erratically in Surrey, B.C. He was observed by Constable [REDACTED] (“Constable C.D.”) and Constable [REDACTED] (“Constable E.F.”) who were in uniform but driving an unmarked vehicle. The officers initiated a stop of A.B.’s vehicle. Constable C.D. immediately told A.B. that he was arrested for “criminal dangerous operation of a motor vehicle” and told him to get out of the vehicle.

[2] Constable C.D. observed what he referred to as a “straight razor” on the console of the vehicle and said he arrested A.B. for possession of a weapon dangerous to the public peace. A.B. was handcuffed by Constable C.D. and put into the back of the police vehicle. A.B. said the police did not tell him of the reason for his arrest nor of his right to counsel, nor did they offer him an opportunity to call a lawyer, contrary to ss. 10(a) and (b) of the *Charter of Rights and Freedoms*, s. 7 Part 1 of the *Constitution Act*, 1982 (“the *Charter*”). The officers conducted a search of A.B.’s vehicle but found nothing of interest to them. A.B. was released with no charges. During the release, Constable C.D. referred to A.B. as a “goomba.”

[3] A.B. had several cameras and audio recording equipment operating in his vehicle, and thus, some, but not all, of the encounter was recorded.

[4] On March 18, 2025, A.B. registered a complaint against Constable C.D. and Constable E.F. with the Office of the Police Complaint Commissioner (“OPCC”), with supplemental information provided on April 15, 2025. A.B. stated that he was aggressively chased by an unmarked vehicle that had no front license plate and without sirens or lights. He complained that he was pulled out of his vehicle, was placed under arrest, not told of the reason for the arrest nor read his right to counsel, was placed handcuffed in the back of the police vehicle for 15 minutes while his vehicle was searched, and when he was released, he was laughed at and called a “goomba”. He further complained that the police searched his vehicle without any basis as the “straight razor” they saw in his vehicle was in fact a small grooming tool with a protective casing on it. He added that the police were searching to find something in his vehicle (the implication is drugs) based on the audio recordings recorded by the audio/visual equipment in his vehicle.

[5] A.B. states that these events traumatized him and his ability to sleep has been significantly impaired as a result.

[6] On July 14, 2025, the OPCC determined that the complaint was admissible and was potentially defined as: *Abuse of Authority* pursuant to s. 77(3) of the *Police Act*, R.S.B.C. 1996 C. 367 [“the Act”], which is oppressive conduct towards a member of the public.

[7] Sergeant [REDACTED] [REDACTED] (“the investigator”) investigated the complaint and completed the Final Investigation Report (“FIR”) on March 3, 2026. She submitted the FIR to the Discipline Authority, Inspector [REDACTED] (“the Discipline Authority”). On March 17, 2025, Inspector [REDACTED] issued his decision, identifying one allegation of

misconduct, *Abuse of Authority* pursuant to s. 77(3)(a) of the Act, and concluded that the allegation did not appear to be substantiated against the either officer.

The Decision of the Commissioner to Refer the Matter pursuant to s. 117(1)

[8] On April 16, 2026, pursuant to s. 117(1) of the *Act*, Police Commissioner Rajan (“the Commissioner”) concluded that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect. His main concern was that the Discipline Authority did not adequately consider the possibility that the traffic stop and the arrests for dangerous driving and possession of a weapon for a purpose dangerous to the public peace were “intentionally or recklessly” made without proper authority, and as a pretext for conducting a criminal investigation into suspected drug activity.

[9] In support of that concern, the Commissioner noted that the Discipline Authority did not address discrepancies in the evidence between the officers in relation to the rational for the traffic stop, that when assessing the justification for arrest, the Discipline Authority did not take into account the fact that A.B. pulled over immediately when the lights and siren were activated, the Discipline Authority did not address multiple inconsistencies in the officers’ evidence in relation to the driving behaviour of A.B., including conflicting versions of when the stop became “dual-purpose”, and in particular, when they became aware that A.B.’s brother was associated with drug trafficking – before or after the stop. The Discipline Authority failed to consider those discrepancies when assessing the grounds for the stop and the subsequent arrest of A.B. Furthermore, the Discipline Authority did not place sufficient weight on the fact that A.B. was released by the officers without charges given that the pattern of driving and possession of the grooming razor was troubling enough to them to justify his arrest, place A.B. in handcuffs

and conduct a search of A.B.'s vehicle. The Discipline Authority failed to consider whether the alleged seriousness of the conduct but the result of "no charges" supported an inference that the stop, arrest, and search were pretextual.

[10] The Commissioner raised concerns over the acceptance of the query results that associated A.B.'s vehicle with drug trafficking, when a close examination of the evidence demonstrated that there was a tenuous association with drug trafficking.

[11] In addition, the Commissioner raised concerns regarding the lack of analysis in relation to the possession of a weapon for a purpose dangerous to the public peace. First, there was a concern raised regarding the description of the razor as a "straight razor" when it was, "a grooming tool," plus there was no articulation by the officers of the dangerous purpose held by A.B.

[12] The Commissioner identified a lack of analysis by the Discipline Authority with respect to the legality of the search. Rather than accepting that the search was lawful as incidental to arrest, the Discipline Authority should have assessed the legality and purpose of the search in the context of the recorded dialogue between the officers in A.B.'s vehicle.

[13] In addition, the Commissioner identified broader concerns regarding the conduct of the officers beyond this incident, as Constable C.D. said the gang crime unit (to which the officers were assigned) is a proactive unit whose mandate includes suppressing high-level criminal behaviour linked to drugs, weapons, and gang violence. Constable C.D. said that they look for traffic violations to help identify drug traffickers and that trivial traffic stops can often provide helpful information for bigger files. That statement taken with the

rationales for stopping, arresting, searching and lack of rigour regarding providing or documenting *Charter* rights, raised additional concerns for the Commissioner.

[14] While the Discipline Authority discussed the *Charter* issues, he did not address the potential *Neglect of Duty* or appear to have adequately considered whether the officers could have safely allowed A.B. to call his lawyer.

[15] Finally, the Commissioner raised concerns regarding the failure of the Discipline Authority to consider *Discourtesy* in the assessment of Constable C.D. calling A.B. a “goomba”.

[16] As a result of finding a reasonable basis to conclude that the Discipline Authority’s decision was incorrect, the Commissioner appointed me, a retired judge, to review the FIR, and the evidence and records referenced therein and make a fresh decision based on the material, pursuant to s. 117(1) of the *Act*. I have read the FIR, reviewed all the documents, listened to the audio recorded statements, and have reviewed all the audio-visual recordings submitted by A.B.

[17] For the following reasons, I conclude that with respect Constable C.D., and each allegation set out below, the evidence referenced in the FIR appears sufficient to substantiate the allegations and require the taking of disciplinary or corrective measures. See: s. 117(8)(d)(i). With respect to Constable E.F., I conclude that the evidence referenced in the FIR appears sufficient to substantiate the allegations and require the taking of disciplinary or corrective measures except the allegation of *Discourtesy*. The evidence does not support that allegation against Constable E.F. My decision with respect to the *Discourtesy* allegation with respect to Constable E.F. is not open to question or

review by a court on any ground and is final and conclusive (See s. 117(10) and (11) of the Act.)

OVERVIEW OF THE EVIDENCE

The evidence of A.B.

[18] On March 5, 2025, at around 17:27, A.B. was driving his vehicle, a [REDACTED] in the Surrey area. His vehicle was equipped with several cameras and audio recording equipment. Camera footage shows him driving on residential streets, at the speed limit and using his turn signal. At one point he turned onto a busier street (probably 104th Avenue). He noticed a vehicle following him closely. It ran a red light to keep up with him and had no front licence plate. He thought “hitters” (someone who might kill him) were following him. His facial expression clearly shows concern. In fact, A.B. was followed by Constables C.D. and E.F., who while in full uniform, were driving an unmarked police vehicle. A.B. claimed that no lights or siren were deployed until after he stopped in the Lordco parking lot. He stated that without warning he was pulled from his vehicle by his arm. He was not told why he was detained and the incident caused him shock. He relied on the camera footage, described later in these reasons. He was handcuffed and placed in the back of the police car. He was not told the reason for his arrest nor told of his right to counsel. Indeed, he immediately asked to speak to his lawyer when he was stopped but was not given the opportunity to do so. He did not understand why he was being stopped. When he was released, he said the officers laughed at him and called him a “goomba.” He said that the police falsely described the tool in his car as a straight razor, when it was, in fact, a small, covered eyebrow grooming tool for personal hygiene that he had picked up at a friend's house.

Evidence of Constable C.D.

[19] Constable C.D. was working with his partner Constable E.F. They are members of the Gang Enforcement Team (“GET”). The mandate of those teams is, amongst other things, to “prevent and suppress all forms of organized crime and gang violence in the City of Surrey through proactive enforcement and education.” See: Surrey Police Service Unit Mandate 2022-02-24

[20] Constable C.D. provided a statement to the investigator on October 30, 2025. He did not make notes of the incident and was relying on his memory, noting it may have faded since the event. He stated that he was working with Constable E.F. He was driving an unmarked police vehicle and Constable E.F. was in the passenger seat. They were in the area of 104th Avenue. He said that they saw the [REDACTED] pull out from a side street, and he thought it turned west bound on 104th, toward Scott Road, but he was not certain. He said the driver made eye contact with him and began to drive at a high rate of speed (according to the FIR, the cameras recorded an increase in speed to 73 km/h). The vehicle made a hard left turn, or at least an abrupt turn. Constable C.D. said that it possibly went into on-coming traffic, but something happened that made him think that the vehicle was trying to evade them. He thought perhaps there was an illegal U-turn.

[21] Constable C.D. said that they obtained licence plate information and that people associated with the vehicle had been found with 20 kilograms of drugs. He was able to close the distance behind the vehicle and conducted a “dual-purpose” stop. The dual-purpose was the traffic violations, but also in relation to a drug trafficking investigation. From the time the officers first observed the vehicle until the vehicle was stopped in the Lordco parking lot was less than a minute. Once the emergency equipment was activated,

A.B.'s driving deescalated quickly and he pulled into the Lordco parking lot. Constable C.D. said he approached the driver and asked him why he was driving like that (the audio/video does not record that) and A.B. said, at some point, "that he didn't know we were police officers and said that he thought we were "hitters" and were going to kill him." That comment heightened Constable C.D.'s fear for his safety and well-being as in his view, typically comments like that come from a person with a criminal lifestyle and are involved in gang conflict. It is not clear when A.B. made those remarks. On the recording he is heard to say that he thought the police were chasing him.

[22] Constable C.D. also stated that in his experience, people whose safety is at risk usually possess weapons to protect themselves such as illegal firearms, knives, and various other items. He noticed what he initially described as a "straight blade razor" on the centre console within arms' reach of the driver. This, to him, was an odd and peculiar thing to have. It was not in a shaving kit. In his mind, it was extremely dangerous. It has a small, sharp blade and "at any point could be used to quickly attack you with it and kill you very quickly." When questioned further, he agreed that it was in fact a face razor and described it as a short, very thin razor blade attached to a handle. The razor is visible in the videos and photos of similar tools were submitted to the investigator. Constable C.D. said it was not in a protective case. The blade appears to be approximately a ½ inch long, but it is difficult to assess from the photos. Constable C.D. emphasized that this type of blade would typically be in a cosmetic bag, and it was unusual to have it within arms' reach. He stated that this type of blade "is used in jails as quick ways to slice and can make a deep laceration to the neck severing an artery and the person would bleed out quickly." Constable C.D. had never seen one within arms' reach and with quick access in

a car. Coupled with the statements that hitters were coming after him, Constable C.D. believed that the razor was possessed by A.B. for a dangerous purpose.

[23] Constable C.D. said his risk assessment was high, as A.B. appeared to be trying to evade them, had a weapon within arms' reach and given his statement that he thought the police were hitters, he felt they needed to gain control of the situation and proceed in the safest manner.

[24] Constable C.D. stated that he believed A.B. was in possession of this weapon for a dangerous purpose and advised A.B. that he was under arrest for that offence, told him to step out of the vehicle for safety reasons and to make sure there were no other weapons. He did not recall any conversations or interactions. He may have told A.B. that he was detained and asked him to step out for a safety search and then saw the razor. The recording shows that he arrested A.B. for dangerous operation of a motor vehicle and told him to step out of the car before he saw the razor. However, it appears that he saw the razor while A.B. was still in the car. He assumed he placed A.B. in handcuffs, although he could not say with certainty. It was his practice to advise suspects of their *Charter* s. 10 (a) and (b) rights (the reason for arrest and right to counsel) and he put A.B. in the police vehicle. Constable C.D. thought that A.B. was given an opportunity to contact counsel but he can not recall. Any delay by him in providing *Charter* rights to a suspect would generally be based on safety issues.

[25] Constable C.D. does not recall specifics of his interactions with A.B., but he said that he does not recall A.B. exercising his right to counsel. He said that he usually explains that he cannot guarantee privacy since the suspect is in the back of a police car, that they were just checking for further weapons in the vehicle, and "once it's done, I'm actually

going to kick you out, because it's not that big of a deal, obviously it's concerning, you're under arrest right now but if we can ensure that this is all copesetic and maybe this was just a misunderstanding, then we can have a conversation about it and we can learn from it and move on." He was not sure if he had that type of conversation with A.B., but this is a regular occurrence, conducted on a nightly basis, and he regularly has this type of interaction.

[26] They then conducted a search incidental to arrest of A.B.'s vehicle and they were looking for weapons. The search took longer than usual as there was weird wiring in the vehicle and Constable C.D. was worried that there was a hidden compartment or trap. It was determined that it was a recording system. They did not find any other weapons in the vehicle.

[27] Constable C.D. said that once they completed the search, he released A.B. He thought A.B. was in the police car for about 10 or 15 minutes. A.B. told them that the razor was a cosmetic razor, and Constable C.D. put it in A.B.'s vehicle truck. He said that the conversation with A.B. afterwards went fairly well. A.B. was frustrated that he had been pulled over by the police. Constable C.D. said he tries to use a sense of humour and lightheartedness to keep situations like this from escalating. He gave examples of other situations where he successfully used humour to diffuse situations.

[28] Constable C.D. denied laughing at A.B. but said he was a happy-go-lucky person and might have laughed at something humorous. He had no intention of being disrespectful or condescending towards A.B.

[29] When asked if he called A.B. a “goomba”, he said he had no recollection of doing that, but it was a term he used. He said he thought it meant “friend” as it was from the Italian word “compare” meaning friend. He did not know that it had a derogatory meaning. His misunderstanding has been corrected by his union representative, and he has stopped using that term. He said that he would have used it to make light of A.B.’s poor choices in terms of driving, having the weapon, to stop being silly, and to make him feel like they were not picking on him.

[30] A.B. was released with no charges. Constable C.D. did not feel it was necessary to write him any tickets as their conversation went well and was sufficient.

[31] When describing the GET mandate, Constable C.D. said that often they look for traffic violations to try to identify drug traffickers and high-level gangsters, to gather intelligence as well as enforcement. Often traffic stops that may seem trivial have resulted in information for bigger files.

Evidence of Constable E.F.

[32] Constable E.F. provided an audio statement on September 16, 2025. He also did not have any notes; however, he did file a police report on March 5.

[33] Constable E.F. was working with Constable C.D. on March 5, 2025. He was the passenger in the unmarked police vehicle and observed the [REDACTED] being driven erratically. He did not know if it was attempting to evade police, but it was switching lanes multiple times, made an illegal U-turn, was making abrupt turns, and they finally stopped it at the Lordo parking lot. Initially they were behind the vehicle and observed the U-turn but according to Constable E.F., they did not turn on the lights and siren because often

people flee when they see police, and he wanted to get plate information before “lighting it up” and didn’t want to “spook him.” He said that Constable C.D. went to the driver’s side and he went to the passenger side. He said that Constable C.D. saw a straight razor on the console. Constable C.D. asked the driver to step out of the vehicle for officer safety and for possession of a weapon for a dangerous purpose and he was taken into custody by Constable C.D. He cannot recall if A.B. was detained or arrested as Constable C.D. conducted the arrest. He cannot recall if he saw the razor. The risk assessment was high once he knew about the razor.

[34] Constable E.F. searched around the area for other weapons while Constable C.D. was dealing with the driver. It was not clear where he searched at this point. Constable E.F. then conducted further checks on the driver and discovered that A.B.’s brother had a history of drug trafficking. Constable E.F. was not part of the arrest and he did not advise A.B. of his *Charter* s. 10 rights.

[35] Constable E.F. said that initially the stop was for a *Motor Vehicle Act* offence, and later, when it was determined that A.B.’s brother was involved with drug trafficking, and finding the weapon, it turned into a dual-purpose stop.

[36] When asked to explain his authority to search A.B.’s vehicle he replied that it was based on the totality of the circumstances including the erratic driving, the weapon in the centre console, and A.B.’s explanation for driving erratically was because he did not know we were police and he thought we were going to do a “hit” on him. That explanation raised concerns for their safety as people involved in that kind of lifestyle tend to carry additional weapons throughout the vehicle and attempt to conceal them. Also, he said the search was incidental to arrest and they were looking for additional weapons, not drugs.

[37] Constable E.F. did not recall if A.B. was provided his *Charter* rights. A.B. was in handcuffs for about 10-15 minutes. Constable E.F. said that he does not know what a “goomba” is and did not say it. He did not hear Constable C.D. call A.B. a “goomba.” Constable E.F. did not recall laughing at A.B. They did not issue A.B. with a ticket because they wanted to give him the benefit of the doubt, and they were exercising police discretion to promote positive police interactions.

[38] Constable E.F. filed a brief report on March 5, 2025, at 18:11, which, in summary, stated that at approximately 17:27 the officers observed the [REDACTED] at 104th Avenue and 126th Street. A check revealed that the registered owner was “carded” in a vehicle with his brother, who was a drug trafficker. They observed the driver make an illegal U-turn and then cut across two lanes, and they believed he was evading the police. He was pulled over in the Lordco parking lot. Constable C.D. saw a straight razor on the centre console and the driver was taken into custody for weapons possession. The driver’s identification was found in his wallet on the passenger seat. Multiple cameras were in the car. The driver said he was paranoid that someone was going to do a hit on him because of the recent gang shootings. Nothing of interest was found in the car. A.B. was released at the scene and the razor was put in the trunk. It was noted that A.B.’s brother was caught in 2023 with 20 kgs of methamphetamine in duffel bags in a rental vehicle. The brothers were carded in a vehicle in February 2025.

Video and audio recordings

[39] The video and audio recordings provided by A.B. are not complete. He told the investigator that he provided her with everything he had in his possession. The camera

functions as an “incident recording device” rather than a continuous loop. It records in 15-20 second increments.

[40] The camera footage shows A.B. driving normally on residential streets and either at or slightly above the speed limit. He then turned onto 104th Avenue and the police vehicle can be seen on the recording. He sped up to 73 km/h (as noted in the FIR). He changed lanes and then appeared to turn right onto a side street, loop around a divider and return to the main street. He is repeatedly looking around. The investigator concluded that this was the erratic driving described by the officers. The interior footage shows the face razor on the centre console within reach of A.B.

[41] The next piece of footage shows Constable C.D. at the driver’s side of the vehicle. There are two views of this interaction. The following conversation is recorded:

Constable C.D.: You’re under arrest for criminal dangerous operation of a motor vehicle, step out of the vehicle, we’ll sort it out afterwards. Step out.

A.B.: Sorry, for what?

Constable C.D.: Step out.

A.B.: I’m gonna call my lawyer first. Everything is on camera bro, I thought you guys were chasing me.

Constable C.D.: You can step out, you’re under arrest, step out.

Constable C.D.: Step out please (while grabbing A.B.’s left arm), how do you unlock it?

A.B.: I'll unlock it for you, let me put it in park properly, and I'll roll up the windows.

Constable C.D.: You're not going to roll up the windows.

A.B.: I'll give you the keys right now. (Constable E.F. comes into view as he exits the passenger side of the police vehicle and walks towards A.B.'s vehicle).

Constable C.D.: Sure, actually just don't reach. (It appeared that Constable C.D. may have seen the face razor at this moment).

Constable C.D.: I want you to unbuckle and just step out of the car, okay. You're not listening very well. Thank you.

A.B.: Do you wanna let go of my arm so I can put it under? (referring to under the seat belt).

Constable E.F.: What's your name man?

A.B.: Teg.

Constable C.D.: Can you unlock it please. (A.B. complies immediately)

Constable C.D.: There we go, just leave your stuff, leave your phone.

A.B.: Can I roll up the window though?

Constable C.D.: No.

[42] The next recording details part of the search of A.B.'s vehicle at 17:33:10. The following conversation is recorded, and the identity of the speakers was determined by the investigator:

Constable C.D.: ...in a rental and he was gonna get fucking rolled.

Constable E.F.: Yeah, but why would you be worried about that?

Constable C.D.: He didn't think we were cops he said. Anything?

Constable E.F.: His brother's a dialer.

Constable C.D.: Yeah, that's why I'm like either one, it's up his ass or he's hid it. He's got cameras everywhere.

Constable E.F.: Why was he trying to flee like that.

Constable C.D.: Because he's probably hiding drugs and until he ...

Constable E.F.: The story doesn't make any sense, the average person doesn't, isn't worried about the vehicle behind them.

Constable C.D.: Hold on I'm gonna talk to you over here.

[43] The next camera footage starts at 17:38:00. Constable C.D. and Constable E.F. appear to be engaged in conversation at a low volume with apparently Constable C.D.'s voice at the end asking, "do we have multiple phones or anything?"

[44] The next camera footage begins at 17:42:33. Constable C.D. and Constable E.F. are standing at the front of A.B.'s vehicle and are having a conversation, the first part of which is inaudible. Constable C.D. then said (from presumably within the vehicle, as the audio recording is clear) "so we've got one, two, how many, one, two, three, four and then down here, look at all of these. I'm just trying to, I'm curious if there is an aftermarket compartment somewhere with the wires." Constable E.F. replied "yeah." Constable C.D. said, "not the best" and Constable E.F. says (inaudible) "yeah."

[45] There is also other footage that is not audible.

[46] When asked to explain the conversation in the vehicle during the search in terms of whether they were searching for weapons or drugs, Constable C.D. replied:

My search of the vehicle was for weapons, my discussion about drugs with Cst. [E.F.] was trying to bring reason to the driving behaviour, the weapon, the accused's behaviour, his history, and belief of a possible hidden compartment. Us discussing theories should not be conflated with the reason for the search.

And Constable E.F. replied:

The scope, nature, and purpose of the search was for any additional weapons in the vehicle as I believe the arrest was for possession of a weapon for a dangerous purpose. As far as I can recall given the gap between the incident until now, I wasn't searching for drugs.

[47] That completes the summary of the evidence drawn from the FIR, and the material relied on by the investigator to complete the FIR.

THE ALLEGATIONS

[48] The Discipline Authority considered whether the conduct of the two officers amounted to *Abuse of Authority* pursuant to s. 77(3)(a), which is defined in the *Act* as:

(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:

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

(i) intentionally or recklessly making an arrest without good and sufficient cause,

(ii) in the performance, or purported performance, of duties, intentionally or recklessly,

- (A) using unnecessary force on any person, or
- (B) detaining or searching any person without good and sufficient cause, or
- (iii) when on duty, or off duty but in uniform, using profane, abusive, discriminatory or insulting language, jokes or gestures to any person including, without limitation, language, jokes or gestures that would likely be seen to demean or show disrespect to the person on the basis of that person's
 - (A) race, colour, ancestry, place of origin or Indigenous identity,
 - (B) political belief or religion,
 - (C) marital or family status,
 - (D) physical or mental disability,
 - (E) age,
 - (F) sex, sexual orientation or gender identity or expression, or
 - (G) economic or social status.
- ...
- (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.

[49] The Commissioner also identified *Neglect of Duty* pursuant to s. 77(3)(m)(ii), 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;

in relation to the failure to provide the *Charter* s. 10(a) and (b) rights to A.B. and implementing or facilitating those rights.

[50] The Commissioner also identified *Discourtesy* pursuant to s. 77(3)(g), which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member, in relation to calling A.B. a "goomba" and laughing at him.

[51] I have considered the following allegations:

- i) *Abuse of authority* pursuant to s. 77(3)(a)(i): intentionally or recklessly making an arrest without good and sufficient cause, in relation to the arrest for dangerous operation of a conveyance and possession of a weapon for a purpose dangerous to the public peace;
- ii) *Abuse of authority* pursuant to s. 77(3)(a)(ii): in relation to the search of A.B.'s vehicle;
- iii) *Neglect of duty* pursuant to s. s. 77(3)(m)(ii): for failing to advise A.B. of the reason for his arrest and of his right to obtain and instruct counsel without delay and implementing and facilitating that right; and
- iv) *Discourtesy* pursuant to s. 77(3)(g) for calling A.B. a “goomba” and laughing at him.

LEGISLATIVE FRAMEWORK

[52] Section 117 sets out the process for appointing a retired judge and the jurisdiction of the retired judge once the appointment is made:

Appointment of new discipline authority if conclusion of no misconduct is incorrect

117 (1) 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.

...

(3) An appointment under subsection (1) must be made within 20 business days after receiving the notification under section 112 (1) (c) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (1) (c) [*discipline authority to review supplementary report and give notice of next steps*].

...

(5) The police complaint commissioner must notify all of the following, as applicable, of an appointment under this section:

- (a) the complainant, if any;
- (b) the member or former member whose conduct is to be the subject of the review;
- (c) a chief constable of the municipal police department with which the member is employed, or former member was employed at the time of the conduct of concern;
- (d) the board of the municipal police department referred to in paragraph
- (e) the investigating officer;
- (f) the retired judge appointed.

(6) The police complaint commissioner must provide the retired judge appointed with copies of all reports under sections 98 [*investigating officer's duty to file reports*], 115 [*if member's or former member's request for further investigation is accepted*] and 132 [*adjournment of discipline proceeding for further investigation*] that may have been filed with the police complaint commissioner before the appointment.

(7) Within 10 business days after receiving the reports under subsection (6), the retired judge appointed must conduct the review described in subsection (1) (a) and notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(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.

[53] The task of the adjudicator at this stage is not to make findings of culpability, but to assess afresh, based on the evidence submitted, whether or not, in relation to each allegation of misconduct, the evidence referenced in the FIR (and supporting documents) appears sufficient to substantiate the allegations and require the taking of disciplinary or corrective measures. See: s. 117(8)(d)(i).

[54] If the adjudicator concludes, based on the evidence and the records referenced in the FIR, that the member's conduct appears to constitute misconduct under s. 117(9), then the adjudicator becomes the Discipline Authority and must convene a discipline proceeding, unless a prehearing conference is offered. See: ss. 117(9) and s. 120(16). If the adjudicator concludes that the conduct does not constitute misconduct, that decision is final and conclusive. See: s. 117 (10).

[55] Defining the task is critical because if the adjudicator finds that the evidence appears sufficient to substantiate the allegations, they then become the Discipline Authority and conduct a disciplinary hearing. If the adjudicator goes beyond a preliminary assessment, and reaches conclusions about the conduct of the member, it will raise an apprehension of bias. (See: *Scott v. British Columbia (the Police Complaint Commissioner)*, 2016 BCSC 1970 at 39.

[56] In sum, my task as an adjudicator does not engage either an appeal or a review of the decision of the internal discipline authority. Indeed, I do not have those reasons. My task is to consider the evidence afresh and make my own decision.

[57] The process is aptly described by Adjudicator Baird Ellan in OPCC File No. 2022-22748 (July 18, 2023):

[57] The review is therefore an assessment of the evidence that falls somewhere between “apparent” misconduct and “proven” misconduct; specifically, whether the evidence “appears sufficient to substantiate” misconduct. While that test may entail some weighing or assessment of the evidence, in particular where there are conflicts, the analysis should not contain any assumptions that the evidence will be interpreted a certain way at a discipline proceeding, where the discipline authority may have the benefit of evidence or submissions on behalf of the member.

[58] The confusion created by the wording of Section 117(8)(d)(i) has been the subject of judicial comment in the past (*Scott* at para. 39), and I will observe here that while there is no onus on the member, the preliminary conclusion required by the section about the “apparent sufficiency” of the evidence is open to challenge at the discipline proceeding in whatever fashion the member may see fit to challenge it, and the discipline authority, despite being the person who has found the evidence apparently sufficient, must approach the discipline proceeding with an open mind about the outcome.

ANALYSIS

Abuse of Authority - Section 77(3)(a)

[58] Abuse of authority, defined as oppressive conduct towards a member of the public and includes in this case, an arrest without good and sufficient cause, either intentionally or recklessly, and detaining or searching any person, and in this case, the vehicle, without good or sufficient cause. Although I assume that A.B. was searched personally before he was placed in the police car, there does not appear to be any evidence in this regard. I

have not considered the allegation of using insulting language or jokes to any person as an abuse of authority, but as a discourtesy.

The stop and arrest

[59] To accurately assess whether the evidence in this case appears sufficient to substantiate the allegations and require the taking of disciplinary or corrective measures in relation to the arrests, it is necessary to review the relevant law.

[60] The *Criminal Code* R.S., c. C-34, s. 1 (“the *Code*”) s. 495 sets out the basis for the police power to arrest:

495 (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence; or

(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

(2) A peace officer shall not arrest a person without warrant for

(a) an indictable offence mentioned in section 553,

(b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or

(c) an offence punishable on summary conviction,

in any case where

(d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

[61] The test for arresting someone without a warrant was established in *R. v. Storrey*, 1990 CanLii 125 (SCC), [1990] 1 S.C.R. 241 at 250:

... an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

[62] As recognized in *R. v. Ashby*, 2013 BCCA 334 at para. 8, the power to arrest without warrant under s. 495(1)(a) extends to hybrid offences by virtue of s. 34(1) of the *Interpretation Act*, R.S.C. 1985, c. I-21:

34(1) Where an enactment creates an offence,

(a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment...

[63] Both the offences for which A.B. was arrested are hybrid offences, meaning they can be prosecuted by indictment or by summary conviction at the discretion of the Crown.

[64] Recently, in *R. v. Carignan* 2025 SCC 43, the Court considered the circumstances where an arrest without warrant was conducted by the police for a hybrid offence. The Court concluded that the provisions of s. 495(2) are mandatory, in that an arrest that is

not compliant with that provision is unlawful (at para. 3). Where the cumulative provisions of s. 495(2) are met, the police officer shall not arrest, and any such arrest is arbitrary pursuant to s. 9 of the *Charter* (at para. 65, 79, 83). Section 495(3) deems the officer acts lawfully in certain circumstances. The Court limited the application of s. 495(3)(b) to circumstances where the officer is facing criminal charges for false arrest (paras. 4, 5, 36, 86). The Court left open the question of whether s. 495(3)(b) also covers police conduct proceedings under provincial or federal legislation enacted to that end (at para. 95).

[65] It is not necessary to engage in whether s. 495(3)(b) applies to these proceedings as, for the following reasons, I have concluded that there appears to be sufficient evidence to substantiate the allegations of abuse of authority, (and require the taking of disciplinary or corrective measures) on the basis that it appears that there may not have been proper grounds to arrest A.B., and therefore it appears that both the arrests and subsequent search incidental to arrest were unlawful.

[66] In *Kosoian v. Société de transport de Montréal*, 2019 SCC 335, the Court discussed the police power of arrest in the context of a civil suit for false arrest, shedding more light on the circumstances that justify arrest. At para. 6, Justice Côté said:

In a free and democratic society, police officers may interfere with the exercise of individual freedoms only to the extent provided for by law. Every person can therefore legitimately expect that police officers who deal with him or her will comply with the law in force, which necessarily requires them to know the statutes, regulations and by-laws they are called upon to enforce. Police officers are thus obliged to have an adequate knowledge and understanding of the statutes, regulations and by-laws they have to enforce. Police forces and municipal bodies have a correlative obligation to provide police officers with proper training, including with respect to the law in force. Under Quebec law, a breach of these obligations may, depending on the circumstances, constitute a civil fault.

And at para. 38:

In carrying out their mission, police officers are required to limit these same rights and freedoms using the coercive power of the state, including by detaining or arresting individuals and by conducting searches or seizures. The risk of abuse is undeniable. That is why, in a society founded on the rule of law, it is important that there always be a legal basis for the actions taken by police officers (*Dedman v. The Queen*, 1985 CanLii 41 (SCC), [1985] 2 S.C.R. 2, at pp. 28-29; *R. v. Sharma*, 1993 CanLii 165 (SCC), [1993] 1 S.C.R. 650, at pp. 672-73). In the absence of such justification, their conduct is unlawful and cannot be tolerated.

And finally, at para. 63:

That being said, the expectations that exist for police officers remain high. Where there is uncertainty about the law in force, it is incumbent on them to make the inquiries that are reasonable in the circumstances, for example by suspending their activities in order to consult with a prosecutor or by rereading the relevant provisions and the available documentation. In principle, an error will be judged less severely if it is made during an emergency response, or in a situation where public safety is at stake, rather than in the context of a carefully planned operation or the routine application of a by-law. In other words, unless the circumstances require immediate intervention, it is not appropriate to act first and make inquiries later. I note that — even in an emergency — the fact that conduct seems dangerous to a police officer does not permit the officer to presume the existence of an offence (see Baudouin and Fabien, at pp. 423-24).

[Emphasis added]

[67] In sum, the power of arrest is a significant encroachment on the rights of citizens. No question that power exists for lawful and justifiable reasons. However, the power must be exercised lawfully.

[68] I turn first to the stop. In my view, although there was evidence that the stop turned into a “dual-purpose” stop, either before the stop (Constable C.D.) or after (Constable E.F.), the stop itself appears to be lawful. A.B. was speeding and at one point he was travelling 20 km/h in excess of the speed limit. The officers believed he appeared to be trying to evade the police, although there is a discrepancy in relation to that belief, as Constable E.F. said that the reason they did not initiate the lights and

siren immediately was because he was checking the licence plate and he did not want to “spook” the driver by identifying themselves as police before that was completed.

[69] There is a significant discrepancy between the officers in terms of when they learned that A.B.’s brother was involved in drug trafficking. Constable C.D. claimed that he learned that before the stop. He also misstated what the information was regarding the brother, in that he said that people associated with the vehicle had been found with 20 kilograms of drugs. In fact, the information they received (after the stop according to Constable E.F.), was that A.B.’s brother had been found in a rental vehicle with 20 kilograms of drugs in 2023 and A.B. and his brother were found together in early 2025. It appears that there was no evidence to associate either A.B. or his vehicle with drug trafficking.

Dangerous operation of a conveyance

[70] I turn to the “first” arrest of A.B. What occurred during that arrest is captured by the video evidence. Constable C.D. initially said in his statement that he arrested A.B. for a weapons offence after he saw the razor. However, the video shows that Constable C.D. quickly arrested A.B. for dangerous operation of a motor vehicle. It was during the efforts to get him to step out of his vehicle that Constable C.D. saw the razor. This apparently occurred when he told A.B. “not to reach”.

[71] Dangerous operation of a motor vehicle is criminalized pursuant to s. 320.13:

Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public.

[72] A conveyance includes a motor vehicle. The offence is a hybrid offence, punishable by indictment or by summary conviction pursuant to s. 320.19(5). The test for the *actus reus* of dangerous driving is found in *R. v. Beatty*, 2008 SCC5 at para 43:

The trier of fact must be satisfied beyond a reasonable doubt that, viewed objectively, the accused was, in the words of the section, driving in a manner that was “dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place.

[73] The test was clarified by Justice Cromwell in *R. v. Roy* 2012 SCC 26 at para. 30, 34, 36-37:

[30] A fundamental point in *Beatty* is that dangerous driving is a serious criminal offence. It is, therefore, critically important to ensure that the fault requirement for dangerous driving has been established. Failing to do so unduly extends the reach of the criminal law and wrongly brands as criminals those who are not morally blameworthy. The distinction between a *mere* departure, which may support civil liability, and the *marked* departure required for criminal fault is a matter of degree. The trier of fact must identify how and in what way the departure from the standard goes *markedly* beyond mere carelessness.

[Emphasis added]

...

[34] In considering whether the *actus reus* has been established, the question is whether the driving, viewed objectively, was dangerous to the public in all of the circumstances. The focus of this inquiry must be on the risks created by the accused’s manner of driving, not the consequences, such as an accident in which he or she was involved. As Charron J. put it, at para. 46 of *Beatty*, “The court must not leap to its conclusion about the manner of driving based on the consequence. There must be a meaningful inquiry into the manner of driving” (emphasis added). A manner of driving can rightly be qualified as dangerous when it endangers the public. It is the risk of damage or injury created by the manner of driving that is relevant, not the consequences of a subsequent accident. In conducting this inquiry into the manner of driving, it must be borne in mind that driving is an inherently dangerous activity, but one that is both legal

and of social value (*Beatty*, at paras. 31 and 34). Accidents caused by these inherent risks materializing should generally not result in criminal convictions.

...

[36] The focus of the *mens rea* analysis is on whether the dangerous manner of driving was the result of a marked departure from the standard of care which a reasonable person would have exercised in the same circumstances (*Beatty*, at para. 48). It is helpful to approach the issue by asking two questions. The first is whether, in light of all the relevant evidence, a reasonable person would have foreseen the risk and taken steps to avoid it if possible. If so, the second question is whether the accused's failure to foresee the risk and take steps to avoid it, if possible, was a *marked departure* from the standard of care expected of a reasonable person in the accused's circumstances.

[37] Simple carelessness, to which even the most prudent drivers may occasionally succumb, is generally not criminal. As noted earlier, Charron J., for the majority in *Beatty*, put it this way: "If every departure from the civil norm is to be criminalized, regardless of the degree, we risk casting the net too widely and branding as criminals persons who are in reality not morally blameworthy" (para. 34). The Chief Justice expressed a similar view: "Even good drivers are occasionally subject to momentary lapses of attention. These may, depending on the circumstances, give rise to civil liability, or to a conviction for careless driving. But they generally will not rise to the level of a marked departure required for a conviction for dangerous driving" (para. 71).

[74] The legislation has been changed since the decisions in *Beatty* and *Roy*; however, it appears that the tests established in those decisions remain unchanged. See *R. v. Heth-Klems* 2023 BCCA 246 at paras. 26-27. In that decision, Justice Fitch, writing for the Court said, at para. 28:

[28] The relevant point to be taken from *Beatty* and *Roy* is this: a finding that an accused operated a motor vehicle in a manner dangerous to the public does not necessarily prove that the manner of driving amounted to a marked departure from the standard of care a reasonable person in the accused's circumstances would have observed. This only makes sense. Driving is an inherently dangerous activity. It might be said that a driver who fails to signal or check their blind spot before changing lanes on a busy highway operates the vehicle in a manner dangerous to the public. But an entirely different question arises as to whether that driver's conduct—perhaps negligent or careless on its

face—constitutes a marked departure from the norm and is, as a result, sufficiently morally blameworthy to attract criminal liability.

[75] The officers observed A.B. driving for less than a minute. The audio and video (and I acknowledge that not all the driving is recorded) did not show the driving described by the officers. Indeed, the officers were not consistent with respect to what they saw. No doubt they saw him speeding and changing lanes, and no doubt they saw the manoeuver where he pulled off and then back onto the road. However, in my view, the evidence does not appear to be sufficient to establish reasonable and probable grounds to arrest A.B. for dangerous operation of a conveyance. That conclusion is supported by the fact that the officers released A.B. without charging him with an offence.

[76] I conclude that the evidence referenced in the FIR appears sufficient to substantiate the allegation of abuse of authority for intentionally or recklessly making an arrest without good and sufficient cause.

Possession of a weapon for a purpose dangerous to the public peace

[77] Constable C.F. also arrested A.B. for possession of a weapon for a purpose dangerous to the public peace. This offence is pursuant to s. 88 of the *Criminal Code*:

(1) Every person commits an offence who carries or possesses a weapon ...for a purpose to the public peace or for the purpose of committing an offence.

[78] Section 88 is a hybrid offence. This offence requires proof of possession and proof that the purpose of that possession was one dangerous to the public peace. There must be a meeting of those two elements. See: *R. v. Cassidy*, (1989) CanLII 25 (S.C.C.). When considering the purpose, all the circumstances must be considered.

Here, Constable C.D. saw the razor on the console of the vehicle. This seemed unusual to him. A.B. had been worried that someone might kill him when he saw the police following him. Constable C.D. was aware that a razor could do serious harm to a person. There is a discrepancy between Constable C.D. and A.B., which is important, in that Constable C.D. said the razor was not sheathed, A.B. said it was. It is difficult to tell from the video. The ability to utilize the razor would be compromised if it did have a cover over the blade. (See for example *R. v. Diamond*, 2016 SCC 46 affirming 2015 NLCA 60).

[79] All of the circumstances need to be considered including the nature of the weapon, (a razor is inherently a tool, not a weapon), the circumstances of the possession of the weapon which was visibly (as opposed to hidden) placed in close proximity to A.B. on the car console, that he thought the police were “hitters” and the use the suspect put the weapon (here, none). Nor is there evidence to support that A.B. potentially would use the knife to attack the police officers through his car window.

[80] In my view, there does not appear to be sufficient evidence that points to any purpose dangerous to the public peace. The razor, which is a grooming tool, was not touched by A.B. The fact that the officers had concerns that it could be used as a weapon is not enough in these circumstances to show reasonable and probable grounds that would justify an arrest. I conclude that the evidence referenced in the FIR appears sufficient to substantiate the allegation of abuse of authority by intentionally or recklessly making an arrest without good and sufficient cause.

[81] I am aware that the evidence points to only Constable C.D. arresting A.B. and placing him in handcuffs. However, at this juncture, and on the evidence to date, there is

no basis on which to find the complaint with respect to Constable E.F. unsubstantiated. The video shows them consulting, albeit the conversation is inaudible. It appears that Constable E.F. is aware of what is occurring with A.B. This is supported by Constable E.F.'s belief that they were searching A.B.'s vehicle "incidental to arrest."

[82] I should note that I have treated the two arrests as one allegation of abuse of authority. The reason is that even if the first arrest was made without good and sufficient cause, but the second arrest was properly made, a search incidental to arrest would likely have been lawful. The two arrests occurred very quickly to the point that neither Constable C.D. nor Constable E.F. recalled the first arrest occurring. The process of handcuffing and placing A.B. in the police car and the purported subsequent search for weapons flowed from the second arrest.

The search of A.B.'s vehicle

[83] I note that the *Act* refers to a search of a person in s. 77(3)(a)(ii)(B) and the misconduct alleged is related to the search of A.B.'s vehicle. However, s. 77(3)(a) describes "abuse of authority" ... including without limitation ... I assume that if the search is not covered specifically by s. 77(3)(a)(ii)(B), it is covered by the general provision noted above, and I have proceeded on that basis.

[84] The search of A.B.'s vehicle was conducted by both officers as incidental to arrest. The test for common law searches as incidental to arrest is well known. It is set out in *R. v. Stairs* 2022 SCC 11 at paras. 34-37, and 47:

[34] The common law standard for search incident to arrest permits the police to search a lawfully arrested person and to seize anything in their possession or the surrounding area of the arrest to guarantee the safety of the police and the

arrested person, prevent the person's escape, or provide evidence against them (*Cloutier v. Langlois*, 1990 CanLii 122 (SCC), [1990] 1 S.C.R. 158, at pp. 180-81). This search power is "extraordinary" because, unlike other police powers, it requires neither a warrant nor reasonable and probable grounds (*Fearon*, at paras. 16 and 45).

[35] The common law standard for search incident to arrest is well established. As explained in *Fearon*, at paras. 21 and 27, it requires that (1) the individual searched has been lawfully arrested; (2) the search is truly incidental to the arrest in the sense that it is for a valid law enforcement purpose connected to the arrest; and (3) the search is conducted reasonably.

[36] Under the second step, valid law enforcement purposes for search incident to arrest include (a) police and public safety; (b) preventing the destruction of evidence; and (c) discovering evidence that may be used at trial (*Fearon*, at para. 75).

[37] The police's law enforcement purpose must be subjectively connected to the arrest, and the officer's belief that the purpose will be served by the search must be objectively reasonable (*R. v. Caslake*, 1998 CanLii 838 (SCC), [1998] 1 S.C.R. 51, at para. 19). To meet this standard, the police do not need reasonable and probable grounds for the search. Instead, they only require "some reasonable basis" to do what they did (*Caslake*, at para. 20). This is a much lower standard than reasonable and probable grounds.

...

[47] The lowest point on the spectrum of cases is where no change is required. An example is *Caslake*, where this Court declined to modify the common law standard for searches of vehicles incident to arrest. The Court found that there is no heightened expectation of privacy in a vehicle that would justify an exemption from the usual common law principles (para. 15).

[85] In my view, because there is sufficient evidence to substantiate the allegations of abuse of authority with respect to the arrests, there is also sufficient evidence to substantiate the allegation of abuse of authority in relation to the search of A.B.'s vehicle without good and sufficient cause. In other words, as it appears that the arrests are unlawful, a subsequent search incidental to arrest is also unlawful.

[86] Another issue arises from the arrests and search. Given there appeared to be insufficient evidence to support the arrest, that the officers did not proceed with any charges against A.B., the fact that this was a “dual-purpose” stop for traffic offences and drugs, and the recorded conversation in the vehicle that suggested that the officers were searching for drugs, may substantiate the allegation that the arrests and subsequent search were contrived and a pretext to search for drugs. If such a pretext was substantiated, that would support both allegations of abuse of authority. Indeed, Constable C.D. seems to take the approach that he will arrest a suspect and “sort it out later.” He said that to A.B. immediately upon arresting him. He also told the investigator (and I repeat for convenience):

He said that he usually explains that he can’t guarantee privacy since you are in the back of a police car, that they were just checking for further weapons in the vehicle, and “once it’s done, I’m actually going to kick you out, because it’s not that big of a deal, obviously it’s concerning, you’re under arrest right now but if we can ensure that this is all copesetic and maybe this was just a misunderstanding, then we can have a conversation about it and we can learn from it and move on”. He wasn’t sure if he had that type of conversation, but this is a regular occurrence, conducted on a nightly basis, and he regularly has this type of interaction.

[87] It appears that there may be a pattern of behaviour by Constable C.D. where he arrests someone (here without grounds) and discourages them from contacting their lawyer while he conducts a search as he will release the person if everything is “copesetic”. Frankly, this is concerning conduct on a wider basis as it supports an allegation of arresting and searching based on pretext as opposed to actual grounds.

Neglect of duty - Section 77(3)(m)(ii)

[88] To substantiate an allegation of *Neglect of Duty* pursuant to s. 77(3)m(ii) of the *Act*, it must be established that the officer had a duty to do something, which he neglected to promptly and diligently do, without good or sufficient cause.

[89] This allegation is in relation to failing to advise A.B. why he was being arrested and of his right to counsel pursuant to the *Charter* ss. 10(a) and (b) and implementing or facilitating that right.

[90] Section 10 of the *Charter* provides:

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefore;

(b) to retain and instruct counsel without delay and to be informed of that right;

and (c) to have the validity of the detention determined by way of habeus corpus and to be released if the detention is not lawful.

[91] In *R. v. Suberu* 2009 SCC 33, the Supreme Court of Canada held that the duty imposed upon the police in section 10(b) of the *Charter* arises "immediately" upon detention, subject to concerns about officer or public safety:

[42] To allow for a delay between the outset of a detention and the engagement of the police duties under s. 10(b) creates an ill-defined and unworkable test of the application of the s. 10(b) right. The right to counsel requires a stable and predictable definition. What constitutes a permissible delay is abstract and difficult to quantify, whereas the concept of immediacy leaves little room for misunderstanding. An ill-defined threshold for the application of the right to counsel must be avoided, particularly as it relates to a right that imposes specific obligations on the police. In our view, the words "without delay" mean "immediately" for the purposes of s. 10(b). Subject to concerns for officer or public safety, and such limitations as prescribed by law and justified under s. 1 of the *Charter*, the police have a duty to inform a detainee of his or her right to retain and instruct counsel, and a duty to facilitate that right immediately upon detention.

[92] In *R. v. Taylor*, 2014 SCC 50, the Supreme Court of Canada emphasized that the implementational component includes facilitating access to counsel:

[24] The duty to inform a detained person of his or her right to counsel arises "immediately" upon arrest or detention (*Suberu*, at paras. 41-42), and the duty to facilitate access to a lawyer, in turn, arises immediately upon the detainee's request to speak to counsel. The arresting officer is therefore under a constitutional obligation to facilitate the requested access to a lawyer at the first reasonably available opportunity. The burden is on the Crown to show that a given delay was reasonable in the circumstances (*R. v. Luong* (2000), 2000 ABCA 301 (CanLII), 271 A.R. 368, at para. 12 (C.A.)). Whether a delay in facilitating access to counsel is reasonable is a factual inquiry.

[25] This means that to give effect to the right to counsel, the police must inform detainees of their s. 10(b) rights and facilitate access to those rights where requested, both without delay. This includes "allowing [the detainee] upon his request to use the telephone for that purpose if one is available" (*Manninen*, at p. 1242). And all this because the detainee is in the control of the police and cannot exercise his right to counsel unless the police give him a reasonable opportunity to do so (see *Brownridge v. The Queen*, 1972 CanLII 17 (SCC), [1972J S.C.R. 926, at pp. 952-53).

[93] As soon as he was stopped, A.B. said he wanted to call his lawyer. He was never given the opportunity to do so. The audio is clear that A.B. was told he was arrested for dangerous driving, although he apparently did not understand what was said to him, and when asked to repeat it, Constable C.D. did not. Constable C.D. apparently did not give A.B. an opportunity to call his lawyer. He said in other cases, he'd smooth things over, tell people they wouldn't have privacy, tell them they would sort things out and so on. A.B. made such a request right away, he was handcuffed and placed in the police car. The evidence appears to substantiate that A.B. was not meaningfully told the reason for his arrest, nor was there any reason given why he was not given an opportunity to call his lawyer.

[94] There is no issue that there is a duty on arresting officers to comply with s. 10(a) and (b) of the *Charter*. The evidence of misconduct by neglect of duty appears sufficient to substantiate the allegation and requires the taking of disciplinary or corrective measures with respect to Constable C.D. as it appears that he did not comply with that duty. Constable E.F. did not participate in the arrest, however, it also does not appear that he did anything to provide A.B. with his *Charter* rights either. The officers were working jointly and continued to do so after the arrest as shown by the subsequent search of A.B.'s vehicle. If Constable C.D. did not provide A.B. with his *Charter* rights, Constable E.F. had an obligation to ensure those rights were provided. Therefore, in my view, the evidence of misconduct by neglect of duty appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures with respect to Constable E.F. as well.

Discourtesy – Section 77(3)(g)

[95] The section defines the misconduct as:

(g) "discourtesy", which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member;

[96] Constable C.D. did not recall calling A.B. a "goomba" but agreed it was a term he used. I add, parenthetically, that the investigator misstated that Constable C.D. immediately acknowledged calling A.B. a "goomba" and concluded that reflected well on his credibility. Constable C.D. did acknowledge using the term, and perhaps that is what the investigator meant. Constable C.D. thought the word meant friend and was using it in a humorous way. On the other hand, A.B. took it to mean that he was a criminal, and

that it was a derogatory term. It appears accepted that the term can have both meanings.

[97] A.B. also said that the officers laughed at him. Both officers denied laughing at him. Constable C.D. said he might have laughed at something humorous during their interaction. The recorded interaction showed that the officers were generally polite and courteous. That recording supports their position that they did not laugh at A.B. in a discourteous manner.

[98] While Constable C.D. did not appear to intend to be discourteous or insulting, by calling A.B. a “goomba”, he was discourteous and thus failed to behave with courtesy in the circumstances. At this juncture, the evidence appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures.

[99] On the other hand, it does not appear that Constable E.F. participated in or was aware of the comment by Constable C.D. In my view, there is no evidence to substantiate an allegation of discourtesy with respect to Constable E.F.

RANGE OF DISCIPLINARY OR CORRECTIVE MEASURES AND NEXT STEPS

[100] I have concluded that the evidence in the FIR and supporting documents contained therein appear sufficient to substantiate all the allegations, save one, and to require the taking of disciplinary or corrective measures.

[101] My decision that the *Discourtesy* allegation with respect to Constable E.F. is not substantiated is not open to question or review by a court on any ground and is final and conclusive (See s. 117(10) and (11) of the *Act*).

[102] Once I have found an appearance of misconduct, I must set out, based on the limited information provided at this juncture, what range of disciplinary or corrective measures I would consider under s. 126(1) of the *Act*. Section 126(3) sets out the approach to be taken when considering such measures:

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.

[103] Assuming the members have no related service record of discipline, the range of measures I am considering includes:

- 1) pursuant to s. 126(f) requires the member to undertake specific training or retraining; and in particular with respect to the law in relation to a warrantless arrest, search incidental to arrest, providing s. 10 *Charter* rights and providing a suspect with the opportunity to exercise the right to counsel;
- 2) pursuant to s. 126 (i) a written reprimand;
- 3) pursuant to s. 126 (j) a verbal reprimand; or
- 4) pursuant to s. 126 (k) give the member advice as to the member's conduct.

[104] In addition, once an appearance of misconduct is found, s. 120(3) permits me to offer the members the opportunity of having a pre-hearing conference. After considering those provisions, I conclude that it is not contrary to the public interest to offer the members the opportunity to participate in a pre-hearing conference in accordance with that section. I am directing that the members to advise the Registrar within five business days from the decision date on whether to accept the offer of a pre-hearing conference. Pursuant to s. 118(1) of the *Act*, if the member or members decline a prehearing

conference, a discipline proceeding must be convened within 40 business days of receiving this notification, to be arranged through the Registrar.

[105] Within ten days of receiving this notification, Constable C.D. and Constable E.F. may, pursuant to section 119(1) of the *Act*, file with the discipline authority a request in writing to call and examine or cross-examine one or more witnesses listed in the FIR at the discipline proceeding.

[106] Pursuant to s. 120(3)(a), if the request to call witnesses is granted, a prehearing conference may not be offered.

Complainant's Right to Make Submissions

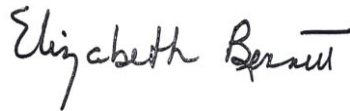
[107] A.B. will receive a copy of this notification. This section serves to notifying him of his right to make submissions. Pursuant to section 113 of the *Act*, A.B. has the right to make submissions at a discipline hearing under section 117(8)(b) or at a pre-hearing conference under section 120(6).

CONCLUSION

[108] In summary, I have arrived at a different conclusion from that of the Discipline Authority. In my view, in relation to the allegations of misconduct, the evidence referenced in the FIR appears sufficient to substantiate the allegations and require the taking of disciplinary or corrective measures. I considered additional allegations of misconduct, as I am entitled to do. I found that the evidence in the FIR appears to be sufficient to substantiate the allegations of abuse of process and of neglect of duty and requires the taking of disciplinary or corrective measures in relation to both members. In terms of discourtesy, I found that the evidence appears to be sufficient to substantiate

the allegation of discourtesy and requires the taking of disciplinary or corrective measures in relation to only Constable C.D. and not Constable E.F. The members will be offered a prehearing conference. If neither chooses not to accept the conference, a discipline proceeding will be convened within the time limits of the *Act*.

DATED at North Vancouver, British Columbia, this 1 day of June 2026

A handwritten signature in cursive script that reads "Elizabeth Bennett". The signature is written in black ink and is positioned above the printed name and title.

The Honourable Elizabeth Bennett, K.C.
Retired Judge of the British Columbia Court of Appeal
Adjudicator