

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

AND

IN THE MATTER OF

NOTICE OF DISCIPLINE AUTHORITY'S DECISION

TO: Member
AND TO: Complainant
AND TO: Investigator
AND TO: Mr. Stan Lowe Police Complaint Commissioner

The Circumstances That Give Rise to the Complaint

On the evening of _____, _____ was visiting his girlfriend and their son at a residence in the _____ block of _____ in _____ BC. Late in the evening, he left that residence and walked up to a nearby 7-11 store. He was on his way back when he attracted the attention of _____ who was patrolling the area hoping to spot a suspect who had been implicated in an assault and possible break and enter which had taken place at _____ Street just minutes before. A description of that offender had been broadcast and _____ matched that in many regards. The officer pulled up beside _____ and tried to engage him in conversation but _____ continued walking. _____ exited his vehicle, caught up with him and grabbed him by the arm. _____ refused to identify himself. _____ handcuffed him and told him he was being detained for his possible involvement in a break and enter. The other officers involved in the investigation joined _____ and _____ within a couple of minutes. _____ says that it was one of these officers who slammed him up against the hood of the police cruiser, threatened him and then yanked his cuffed wrists up behind his back in a way that caused injury to his wrist. _____ called for the police wagon. _____ was lodged in the back of that vehicle and driven over the Second Narrows Bridge to the intersection of Main Street and Mountain Highway in North Vancouver. There he was released.

The Complaint

On [redacted] filed an online complaint through the website of the Office of the Police Complaint Commission. On [redacted], a formal Police Act investigation was initiated to determine if any misconduct, as defined by section 77(3), Part 11 of the Police Act, had occurred. All four of the officers who had been involved in this investigation and detention were named. The allegations were:

1. Potential Misconduct: Abuse of Authority - Unlawful arrest for a break and enter
2. Potential Misconduct: Abuse of Authority - Unnecessary force
3. Potential Misconduct: Discreditable Conduct - To bring discredit to the municipal police department by dropping the complainant off at an intersection in North Vancouver.
4. Potential Misconduct: Abuse of Authority - Unlawful arrest for apprehended breach of the peace.

[redacted] was assigned as investigator. He conducted an investigation and produced a final investigative report which was filed on [redacted]. He found, on a balance of probability, that the allegations of misconduct against each of the four officers were not supported by the available evidence and submitted that they be found to be unsubstantiated.

[redacted] as the Disciplinary Authority, adopted these findings. The Office of the Police Complaint Commissioner was satisfied with that determination as it related Constables [redacted] and [redacted] but determined that there was a reasonable basis to believe that the decision of the Discipline Authority in relation to [redacted] was incorrect in regard to the third and fourth allegations.

Pursuant to the provisions of section 117(4) I was thus appointed to review this matter and reach my own decision based on the evidence as to whether

- 1) abused his authority by unlawfully arresting [redacted] for Breach of the Peace and
- 2) brought discredit on the municipal police department by dropping the complainant off at an intersection in North Vancouver.

In the event that I find either of the allegations of misconduct substantiated I must assume the powers and perform the duties of the Discipline Authority in respect of the matter and must convene a discipline proceeding, unless a prehearing conference is arranged.

The Law Governing Arrest For Breach of the Peace

Section 31 (1) of the Canadian Criminal Code provides that:

Every peace officer who witnesses a breach of the peace and everyone who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

In addition to this statutory authority to effect the arrest of an individual who is committing a breach of the peace, police also have a common law authority to arrest without warrant when they honestly and reasonably believe that such a breach will be committed in the immediate future. *Hayes v Thompson* (1985), 127C.C.C. (3d) 254, 44C.R. (3d) 316, [1985] 3W.W.R. 366 (B.C.C.A.)

Did have the requisite honest and reasonable belief that would commit a breach of the peace in the immediate future?

says that he first noticed the complainant at 1:16 AM. By 1:19 he had arrested him and contacted dispatch to report this apprehension. Two of his fellow officers arrived within seconds of him making this call. They had been speaking to the subjects of the assault and attempted break and enter and found that the perpetrator of those offences was known to them. They had provided the man's name. By 1:22 the officers had 's name and had confirmed his identity through their PRIME system. He was not the man they were seeking. An apology and an immediate release would seem to have been in order.

It is at this point that decided to "breach" the complainant and transport him to North Vancouver. In the general occurrence report which he filed later that day, explained this decision.

There is no indication from this entry that ever put his mind to the legal requirements of a preventative arrest for a breach of the peace.

When the investigation of this matter was commenced, the officers were compelled, pursuant to Section 101 of the Police Act, to cooperate fully with the investigator. At the request of provided a duty report on . He said that prior to making this formal statement he had reviewed the file from this incident so presumably he read his

original occurrence report. Yet he did not take this opportunity to explain this decision or this entry. It is likely that he was at a loss and could think of no logical way that he could connect the limited data provided in the PRIME report to a reasonable belief that if released, [redacted] would commit a breach of the peace in the immediate future.

Instead then, he chose to report the previously unmentioned issue of [redacted]'s agitated and angry state of mind. This time, he addressed the appropriate questions. Because [redacted] was angry at having been detained, handcuffed and searched for an offence he did not commit, [redacted] concluded that if released he could be violent toward anyone he might encounter on the street. He expressed particular concern for the complainants in the original assault and break and enter allegation who were apparently out searching for their guilty acquaintance. From his patrol of the neighbourhood a few minutes earlier, [redacted] knew there was not likely to be anyone else on the streets but raises a possible sighting of these two individuals to show [redacted] might indeed meet someone and become violent.

Is this an honest and reasonable belief? The following evidence is relevant to an assessment of this issue:

1. Officers did not note any signs that [redacted] was under the influence of drugs or alcohol.
2. [redacted] specifically noted that there were no mental health concerns.
3. [redacted] had just been detained, handcuffed and searched because he was suspected of a break and enter he did not commit. He took umbrage with this and was uncooperative but not combative.
 - a. When [redacted] tried to ignore him and carried on walking, [redacted] grabbed him by the arm, guided him back to the cruiser and secured him with one hand while he called into dispatch. He used the side of his vehicle to hold [redacted] steady. He maintained a wrist finger lock on one of [redacted]'s arm and this minimal force was effective.
 - b. Constable [redacted] arrived on the scene within a minute or two after [redacted] was apprehended. He tried to get [redacted]'s name but [redacted]'s attention was on [redacted]. He was asking why he'd been stopped. He was already handcuffed but it was [redacted] who searched him. Again he was uncooperative, angling his body so that it was harder for the officer to access his pockets. The officer continued speaking to

the suspect, explaining that they needed to identify him so he could be eliminated.

kept interrupting but finally did provide his name.

- c. Constable arrived on the scene with He reported that was “verbally aggressive with the officers swearing and spouting off profanities.”
 - d. Constable attended the scene driving the police wagon. He did not recall anything unusual as was being escorted to and placed in the wagon. When he was released a short time later in North Vancouver, described him as compliant.
4. was angry at being wrongly accused but he was not irrational or out of control.
 5. There were no reports of threatening anyone.
 6. The PRIME report that was originally used as the reason for breaching is lengthy.

In the interview that had with on his attention was drawn to the reasons he gave in his original occurrence report for breaching said he was told by someone that was a and was listed as a person of interest on a (This was the “review of the PRIME information” he had reported.) He told this could have had a bearing on his decision but given the passage of time, he was not sure. He offered no explanation for why he did not mention any of the concerns about potential violence that he articulated in his duty report.

The Vancouver Police Department’s policy manual was updated just a month or so before this incident so , in reviewing this case, considered both the policy that had been in effect from August of 2008 until the end of March, 2015 as well as the amendments that came into effect April 1st, 2015. The following section is not one that was changed.

PROCEDURE

1. There are two types of Breach of the Peace Arrests:

a. Breach of the Peace – Found committing...

b. Apprehended Breach of the Peace: Police Officers have a common law power of arrest for an "apprehended breach of the peace". This occurs when the police officer has not witnessed a breach of the peace, but the officer believes on reasonable grounds that a breach will take place unless an arrest is effected.

Further, the apprehended disturbance or threat must be serious enough to cause a reasonable belief that, if the police do not intervene, a more serious problem will result involving personal injury or damage to property. The apprehended breach of the peace must be imminent and the risk that the breach will occur must be substantial.

2. Vehement or emotional verbal expression of disagreement with police does not constitute a breach of the peace, if such behaviour does not otherwise create a risk of personal injury or damage to property.

3. An arrest for a Breach of the Peace or an Apprehended Breach of the Peace is not meant to be a mechanism to control or monitor people that officers may regard as dangerous or prone to criminal activity.

Paragraph 3, quoted above should have given pause to any officer contemplating a breach of the peace arrest because of suggestions of past criminal activity recorded in the PRIME system. Similarly Paragraph 2 describes precisely the behavior that sought to rely on when he tried to justify his actions after the fact. While police department policies and directives cannot diminish the peace officer's inherent discretion they are an important source of guidance and any responsible exercise of discretion would, in my view, involve acknowledging the directive which would normally govern and articulating reasons why a different course of action would be preferable.

was not violent toward the police officers who dealt with him that night and they were the ones he was mad at. On all the evidence, I find that s stated concerns that if he were released at the scene would behave violently to any pedestrians he might encounter on the street is unreasonable. That together with the inconsistencies in 's evidence as it relates to his reason for breaching the complainant leaves me with grave doubts about this officer's credibility. On all the evidence, I find on the balance of probabilities that the allegation that abused his authority pursuant to section 77(3)(a)(i) of the Police Act by intentionally or recklessly arresting for a Breach of the Peace without good and sufficient cause is substantiated.

Did conduct himself in a manner the he knew or ought to have known, would likely bring discredit on the Vancouver Police Department?

When was taken into custody sometime between 1:16 and 1:19 AM on , said he tried to advise him of the reason for the detention and his rights under S10 of the Charter. was struggling and arguing making this a difficult task. There is, however, no reason to doubt that did what he could in the circumstances to comply with his obligations under the law.

What is clear is that this was an investigative detention and not an arrest. At 1:21 A.M. [redacted] had [redacted] s name and called dispatch with this information. [redacted] arrived at the scene with the police wagon at 1:22 and said it was a few minutes later that members received the information that cleared [redacted] as a suspect. It is not entirely clear from the various statements and interviews but it seems likely that [redacted] was already lodged in the police wagon by this time. There is no suggestion by any of the officers who were at the scene or by [redacted] that he was told that he had been cleared. At 2:05, [redacted] dropped [redacted] off in North Vancouver. [redacted] who had accompanied the wagon in his own cruiser, said that at that time [redacted] “was given an explanation that he matched the description of the original suspect and why he was dropped off.”

[redacted] was of the view that the original investigative detention of this complainant was justified. I agree. Had [redacted] not made the decision to arrest [redacted] for an apprehended breach of the peace that legal detention would have ended as soon as officers discovered that [redacted] was not the suspect. Since the basis for [redacted] s detention had changed he had the right to be informed of this. *R. v Black*, [1989] 2 S.C.R.138, 50 C.C.C. (3rd) 1, 70 C.R. (3rd) 97. [redacted] had shown no interest in exercising his right to counsel when he was first detained and his change of status as a detainee would be unlikely to alter this decision. The failure to inform, however, was not without consequences.

During his interview with [redacted] on [redacted], [redacted] was asked about his understanding of the department policy on release of breach of the peace detainees. (This question was probably put to him because the policy provided that the release point should be a location in Vancouver) [redacted] said it was his understanding that as a Non Commissioned Officer, he had some latitude. He explained that while the usual practise was to take detainees to the police detachment, they were often released from the sally port there and for some, like [redacted], that would be a very inconvenient location. In explaining the discretion he felt he was entitled to exercise he went on to say:

Sometimes depending on the person involved and on where they reside, are staying, you’re actually closer to the residence or the place they’re staying, a friend who’s going to look after them. Quite often we’ve dropped people off within half a block, around the corner to spare them any embarrassment in case someone’s up.

Had [redacted] advised [redacted] of his changed status at the scene, the complainant may have volunteered or been asked to confirm his residential address or the place where he was staying. As it is, we know that after being dropped off in North Vancouver, [redacted] proceeded to walk back to Vancouver. [redacted] does not ask him about this.

explained his decision to transport to North Vancouver by saying, “If he was looking to go home, it would be beneficial to drop him off on the north side of the bridge in a well-lit area.” I question the officer’s sincerity and good will.

1. He made no effort to determine the distance between what he believed to be s residential address and the drop off point he had chosen until after this complaint was laid.
2. He had no reason to believe that was “looking to go home.” The circumstances in which he was found would suggest that he was not. As the officer noted there was little by way of bus service at this hour of the morning and had been planning to return to North Vancouver that night he would probably not have been walking northbound in the at 1:15 in the morning.
3. stressed the convenience of the drop off point he chose. Having concluded that would have little or no chance of getting a bus in Vancouver at this hour he then suggested that bus transport might be an option in North Vancouver.
4. Since he did not advise of the fact that he had been breached and the plan was to drop him off at the north end of the Ironworker’s Bridge, he deprived the complainant of the opportunity to tell him:
 - a. Where he had planned to stay that night,
 - b. Whether the address they had on file for him was still his residence. (On the PRIME the residential address they had for was shown as the address of one of his associates, a woman some twenty years older than him...it might be that of his mother. He appears to come and go from that address.)
 - c. That the proposed drop was several kilometres from this residence,
 - d. That if the officer planned to drop him off in North Vancouver it would be more “beneficial” for him to be let out at the north end of the Lion’s Gate Bridge,
 - e. That he had no money and so would have to proceed on foot from any drop off point that was chosen. (Police policy states that a lack of money is one of the factors the NCO should consider when removing a detainee from the scene.)

Having considered the circumstances of the original arrest and the reasons given for it, as well as s subsequent conduct, I conclude that was influenced by the fact that had been uncooperative and had a significant number of PRIME entries. He may have believed that though was cleared as a suspect on the original complaint, he deserved to be subjected to a bit of discomfort and inconvenience. This explanation suggests itself but I cannot find on a balance of probabilities that was being spiteful. He did, however, let his feelings about

the character of the complainant interfere with his professional judgement to such a degree that he acted recklessly. The end result was that he picked up a man who was innocent of the offence he was being investigated for and when he found this was the case, instead of releasing him immediately he contrived to drive him some distance away and drop him off in a location which was bound to be very inconvenient. This unprofessional behaviour amounted to conduct that the member knew or ought to have known would be likely to bring discredit on the municipal police department. I find that the allegation that _____ committed Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* is substantiated.

Notice of Next Steps

[1] As required by s. 117(8) of the *Police Act*, I hereby provide notice to
as follows:

- a. For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate allegations 3 and 4 as against _____.
- b. This constitutes misconduct and requires the taking of disciplinary or corrective measures;
- c. A prehearing conference will be offered to _____.
- d. _____ has the right pursuant to s. 119 to request permission to call, examine or cross-examine witnesses at the discipline proceeding, provided such request is submitted in writing within 10 business days following receipt of this notice of decision.
- e. The range of disciplinary or corrective measures being considered include:
 - i. Suspending _____ without pay for not more than 30 days.
 - ii. Reprimanding _____ in writing;
 - iii. Reprimanding _____ verbally.

Dated at Surrey, British Columbia this 16th day of October, 2016.

A handwritten signature in black ink, appearing to read "C. Lazar". The signature is written in a cursive, slightly slanted style.

Hon. Carole D. Lazar, Discipline Authority