



Office of the
Police Complaint Commissioner

British Columbia, Canada

CONCLUSION OF PROCEEDINGS

Pursuant to s.120(16) of the *Police Act*, RSBC 1996, c.367

OPCC File: 2016-11505

March 9, 2017

To: [REDACTED] (Complainant)

And to: [REDACTED] (Member)
c/o Saanich Police Department
Professional Standards Section

And to: The Honourable Mr. Wally Oppal, Q.C. (Discipline Authority)
Retired Judge, BC Court of Appeal

And to: Deputy Chief Constable Derren Lench (Prehearing Conference Authority)
c/o Central Saanich Police Service
Professional Standards Section

And to: Chief Constable Bob Downie
c/o Saanich Police Department
Professional Standards Section

On January 20, 2016, the Office of the Police Complaint Commissioner (OPCC) received a registered complaint from [REDACTED] describing his concerns with a member of the Saanich Police Department. Briefly, [REDACTED] reported that on [REDACTED], he was riding his bicycle when he was pulled over by a police officer. The officer immediately asked for his identification. [REDACTED] stated that he asked the officer for the reason for the request to which the officer responded that he was investigating a fire and that if [REDACTED] did not provide identification he would be arrested for obstruction. [REDACTED] advised that he continued to ask for the reason why the officer needed his identification. The officer then took [REDACTED] water bottle from his bag, grabbed him and pushed him to the ground. The officer stated he was arresting him for Obstruction of Justice. [REDACTED] advised that the officer then placed him in the back of the police vehicle, where the officer searched his bag, accused him of using an alias and that he was wanted in [REDACTED].

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The allegations contained in [REDACTED] complaint were reviewed and the allegations concerning the detention and search of [REDACTED] and the force used on him were determined to be admissible. Accordingly, the complaint was forwarded to the Professional Standards Section of the Saanich Police Department for investigation.

Saanich Police Professional Standards investigator, [REDACTED], conducted an investigation into [REDACTED] allegations and on [REDACTED], he submitted the Final Investigation Report to the Discipline Authority.

In the report, [REDACTED] identified the following allegations of misconduct:

1. That on [REDACTED], [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on [REDACTED]. Specifically, grabbing, pushing to the ground and handcuffing [REDACTED].
2. That on [REDACTED], [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* by intentionally or recklessly detaining and searching [REDACTED] without good and sufficient cause.

Following the investigation conducted by [REDACTED], on [REDACTED], the original Discipline Authority, [REDACTED], determined the evidence did not appear to substantiate the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by [REDACTED] nor did the evidence appear to substantiate the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act*.

On December 7, 2016, pursuant to section 117(1) of the *Police Act*, the Police Complaint Commissioner considered that there was a reasonable basis to believe that [REDACTED] decision was incorrect and, pursuant to section 117(4) of the *Police Act*, appointed retired Court of Appeal judge, Mr. Wally Oppal, Q.C., to review the matter and arrive at his own decision based on the evidence.

On January 25, 2017, upon review of the report and the evidence and records referenced in it, Mr. Oppal determined that the conduct of [REDACTED] appeared to constitute misconduct. Subsequently, pursuant to section 117(9) of the *Police Act*, Mr. Oppal became the Discipline Authority in respect of this matter. Mr. Oppal offered [REDACTED] a prehearing conference with the range of disciplinary or corrective measures of advice as to conduct; a verbal or written reprimand; or requiring specified training.

On January 27, 2017, the Police Complaint Commissioner designated Deputy Chief Constable Derren Lench of the Central Saanich Police Service to perform the duties of the Prehearing Conference Authority.

A prehearing conference was held on February 15, 2017, before Deputy Chief Constable Lench as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

Allegation #1: *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on [REDACTED]. Specifically, grabbing, pushing to the ground and handcuffing [REDACTED].

-Verbal Reprimand

Allegation #2: *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* by intentionally or recklessly detaining and searching [REDACTED] without good and sufficient cause.

-Verbal Reprimand

A report following the prehearing conference was received at our office on February 22, 2017. In the prehearing conference report, Deputy Chief Lench considered a number of aggravating and mitigating factors in arriving at a decision on appropriate disciplinary/corrective measures.

Deputy Chief Lench determined the misconduct committed by [REDACTED] to be serious. It was an aggravating factor that an officer with 10 years' experience would not have a full understanding of the law in relation to investigative detention.

Deputy Chief Lench considered [REDACTED]' record of employment and service record of discipline. [REDACTED] has received several commendations and letters of appreciation from citizens during his service including the Province of BC Award of Valour (2015), the Chief Constable's Certificate of Commendation (2015), the Division Commander's Certificate of Commendation (2014), and the Division Commander's Commendation (2008). Comments from [REDACTED] performance reviews were very positive. In addition, [REDACTED] has no record of discipline on his service record during his 10 years of service with the Saanich Police Department.

Deputy Chief Lench believed that the likelihood of future misconduct by [REDACTED] to be very low as it was clear to Deputy Chief Lench that [REDACTED] has taken this matter seriously, has accepted full responsibility for his actions, and has acknowledged the errors he made. Moving forward, [REDACTED]' service record of discipline will include a record of this incident which will have a negative impact should he be found to commit any further *Police Act* defaults.

Deputy Chief Lench noted that [REDACTED] has already undertaken training as a result of this incident to ensure he fully understands police powers as it relates to detention and arrest in order to avoid this type of situation from occurring again in the future. Specifically, [REDACTED] has undertaken specific training on forming reasonable grounds to detain and arrest; had a one-on-one training session with the Saanich Police Legal Updates Instructor to go through, in detail, the grounds required for investigative detention and arrest; and also reviewed key cases in this area, *R. v. Mann*, [2004] 3 S.C.R. 59 and *R. v. Grant*, 2009 SCC 32.

In addition, [REDACTED] has reviewed the B.C. Civil Liberties Association's "The Arrest Handbook - A Guide to your Rights." [REDACTED] also fully supported the use of this incident as a department wide training session as he felt that this process has been a tremendous learning experience for him and thought other members at the department would benefit from learning from this incident as well.

In determining whether disciplinary/corrective measures imposed by a Prehearing Conference Authority are adequate and appropriate, we must keep in mind statutory guidance provided by the *Police Act*. Section 126(3) of the Act states that 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.

In reviewing the report prepared by Deputy Chief Lench, we are of the view that Deputy Chief Lench has appropriately considered the aggravating and mitigating factors pursuant to section 126 of the *Police Act* in arriving at an appropriate disciplinary/corrective measure. [REDACTED] has completed training in this area on his own initiative, and has consented and encouraged the use of this incident as a training tool for other members. This is demonstrative of a member who has accepted full responsibility for their actions, understands the errors made and has learned from this incident. In addition, [REDACTED]'s actions in this incident have garnered significant media attention which has reinforced the corrective and educational approach to discipline in this matter.

The circumstances of this incident exposed a lack of understanding by [REDACTED] to demand identification in these circumstances, to arrest for Obstruction when a member of the public is non-compliant with such a demand and resorting to force to carry out that demand. The corrective measure of a verbal reprimand is within the range suggested by Mr. Wally Oppal, Q.C. as the Discipline Authority in this matter and is appropriate having considered all the relevant circumstances. The training already completed by [REDACTED] obviates the need for additional corrective measures such as a requirement to undertake specified training or retraining to be imposed.

Therefore, the agreement reached at the prehearing conference is approved and the resolution is final and conclusive. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with the *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.



Stan T. Lowe
Police Complaint Commissioner

cc. [REDACTED], Saanich Police Department
[REDACTED], Saanich Police Department