

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

**AND**

**IN THE MATTER OF THE PUBLIC HEARING  
INTO THE COMPLAINT AGAINST  
CONSTABLE #369 ADAM PAGE  
OF THE ABBOTSFORD POLICE DEPARTMENT**

**DECISION ARISING FROM PUBLIC HEARING**

- TO: Constable Adam Page, Abbotsford Police Department
- AND TO: Chief Constable Bob Rich, Abbotsford Police Department, Discipline Authority
- AND TO: Mr. Stan Lowe, Police Complaint Commissioner
- AND TO: Mr. Joe Doyle, Public Hearing Counsel
- AND TO: Mr. Kevin Woodall, Counsel for Constable Page
- 

***Introduction***

[1] The Police Complaint Commissioner ordered a public hearing into the conduct of Constable Adam Page, a member of the Abbotsford Police Department. The hearing proceeded in Vancouver on February 18 and 19, 2013. At the commencement of the hearing, counsel outlined the allegations to be addressed at the hearing, namely that Const. Page abused his authority on September 20, 2009 when he used unnecessary force on Mr. Darrell Kerr, and that he made misleading or false statements in a written duty report dated December 21, 2010, and when being interviewed by Staff Sergeant C. Vreeman on March 1, 2011, in the course of an investigation into the officer's conduct.

[2] Const. Page was charged by indictment as a result of the assault of Kerr. He eventually pleaded guilty to the summary conviction offence of assault. He was given a conditional discharge in respect of which a one-year term of probation was imposed. At

the outset of this public hearing, Const. Page admitted the allegation of misconduct by abuse of authority. He denied the allegations of deceit. It follows that these reasons are concerned only with the question of whether misconduct by way of deceit has been proved on the balance of probabilities

*Overview*

[3] Counsel filed an agreed statement of facts, annexed to which were relevant documents. A digital audio-visual recording of Const. Page's interaction with Kerr was entered as an exhibit. Four witnesses testified: Ms. Risa Assimes, a loss prevention officer employed by London Drugs, Mr. Kerr, Constable Poulin and Const. Page. The relevant evidence is the following.

[4] Ms. Assimes was working as a loss prevention office at the Seven Oaks Shopping Mall, Abbotsford premises of London Drugs. On September 20, 2009, she detained Mr. Kerr alleging that he had stolen an electric toothbrush. Kerr accompanied Ms. Assimes to her office. The office was equipped with an audio-visual recording system which was operational. The relevant interaction between Assimes, Kerr, Const. Page and Const. Poulin was recorded and subsequently converted to VHS, and later DVD, format.

[5] Ms. Assimes called the Abbotsford Police Department to report the incident. In due course Const. Page and Const. Poulin arrived at Ms. Assimes's office. Kerr was seated on a bench against a wall in the office. Ms. Assimes was seated at her desk preparing a report to crown in relation to the alleged offence of shoplifting. In response to a question from Const. Page, Ms. Assimes said Kerr had been very, very cooperative and a "real nice guy". All was calm.

[6] The DVD shows that Const. Page donned gloves and approached Kerr who then stood up apparently in response to a direction from Const. Page although the audio is not clear. In response to a direction from Const. Page, Kerr turned around and placed his hands behind his back whereupon Const. Page handcuffed him.

[7] Const. Page asked Kerr a number of questions about his activities that day, his past contacts with police, and his alcohol and drug use. Kerr was generally forthcoming, but stated that had not used drugs or alcohol for two years. At the hearing, Kerr admitted that statement was false. Const. Page searched the pockets of Kerr's coat but did not search Kerr. In response to a request for identification, Kerr produced a driver's licence that he said did not contain his current address. He said the sticker that had been issued to reflect the change of address had come off and been lost. When asked where he was living, Kerr said he lived alone at 3665-264<sup>th</sup> Street, in Langley. There is no evidence on the question of whether that was or was not his correct address at the time.

[8] Const. Page asked about a phone at the residence and Kerr replied that there was none but he had a cell phone. Const. Page asked where the cell phone was. Kerr attempted to move his handcuffed hands to the left pocket of the pants he was wearing, seemingly to produce the cell phone. There is no evidence on the question of whether Kerr actually had a cell phone in his pocket.

[9] As Kerr was reaching for his pocket, the following conversation ensued:

Page: Cell phone?

Kerr: I do have a cell phone.

Page: Where's that at?

Kerr: Pardon

Page: Where's that at?

Kerr: (indecipherable)

Page: J - just so you know, is it - so you for sure live there right, by yourself?  
Nobody else?

Kerr: Well it's the -

Page: Because when I send the RCMP there and they show up it's obstruction,  
that's what it is.

Kerr: Oh, I'm (indecipherable) I don't know, I -

Page: (indecipherable) if not -

Kerr: -just gave you m stinking address, alright? Fuck.

Page: Okay, then fine. Answer my questions straight up.

Kerr: I have been. You haven't been straight with me. Y - You're asking me  
double questions.

Page: Now you're gonna go. All the way out to the fuckin car... you got me?  
Come on.

[10] The visual component of the DVD gives context to the transcript. Const. Page's voice was calm, as were his actions, up to the point at which he asked Kerr where his cell phone "was at". His tone of voice changed markedly at that point. He became verbally aggressive with Kerr as he warned him about obstruction. Immediately after Kerr said in a raised voice "you're asking me double questions" Const. Page grabbed Kerr who was seated on the bench, pulled him up, turned him around, placed him in a combination arm and head lock, and pushed him forward into the wall. The impact with which Kerr's right shoulder hit the wall openly fractured the drywall at the point of contact.

[11] Kerr did not file a complaint with the Police Complaint Commissioner. However, on April 13, 2010, the Commissioner received information from Staff Sergeant Vreeman of the Abbotsford Police Department's Professional Standards Section advising of allegations of on-duty misconduct on the part of Const. Page. On April 19, 2010, the Commissioner ordered an investigation into the allegations. Staff Sgt. Vreeman also undertook a criminal investigation and on March 14, 2011, crown approved a charge of assault against Const. Page.

[12] In the course of the discipline investigation Staff Sgt. Vreeman required Const. Page to prepare a duty report recounting the incident involving Kerr. In that report dated December 21, 2010, Const. Page said the Kerr had exhibited a "1,000 yard stare", he had instructed Kerr to stand up before he grabbed him, Kerr unsuccessfully attempted to pull away from Const. Page, and he stepped on Kerr's right calf and ankle, lost his balance, and fell forward into Kerr, pushing him into the wall.

[13] Staff Sgt. Vreeman interviewed Const. Page on March 1, 2011, at which time Const. Page repeated much of what he had said in the duty report, namely that Kerr stared down Const. Page which he took to be unnerving, Kerr tried to pull away from Const. Page, and he stepped on the back of Kerr's right calf which caused him to lose his balance and fall against Kerr. In that interview Const. Page also stated that he had contacted Ms. Assimes on September 20, 2008 to advise her that someone would attend at London Drugs to take a picture of the wall, get a statement from her, and obtain a copy of the video.

[14] Staff Sgt. Vreeman considered the statements made by Const. Page on December 21, 2010 and March 1, 2011 to be false or misleading. He submitted a final investigation report to the designated discipline authority, Deputy Chief Goerke of the Abbotsford Police Department, in which he recommended that the allegation of abuse of authority and the allegations of deceit be substantiated. The Deputy Chief concluded that the evidence appeared to substantiate all allegations and the matter was referred to a discipline proceeding. The discipline proceeding commenced on July 5, 2011 before Chief Constable Rich of the Abbotsford Police Department, but was adjourned pending the outcome of the assault charge.

[15] Const. Page pleaded guilty to the summary conviction offence of assault on April 12, 2012. The discipline proceeding continued thereafter and concluded on June 18, 2012. On July 3, 2012, Chief Constable Rich issued his decision stating that he had concluded that the disciplinary default of abuse of authority had been substantiated, but that the disciplinary defaults of deceit had not been substantiated.

[16] The Commissioner reviewed the Chief Constable's determination, concluded that there was a reasonable basis to believe that the finding in relation to the allegations of misconduct by way of deceit were incorrect, and ordered that this public hearing be convened.

[17] Section 77 (1) of the *Police Act* provides that "misconduct" means conduct that constitutes a public trust offence described in s. 77(2). Section 77(2)(f) provides that deceit includes the making of any oral or written statement in one's capacity as a member of a police force that, to the member's knowledge, is false or misleading. It is readily apparent from the structure of the definition that the making of false or misleading statements in the course of one's duty as a police officer is a breach of the trust the public is entitled to expect from those in police service when reporting to superiors in relation to the performance of their duties.

*The Statements of December 21, 2010 and March 1, 2011*

[18] Const. Page described the duty report that he prepared on December 21, 2010 as a “pure version” report by which he meant one that recounted his memory of events without being influenced by anything said or done after the incident, nor by observation of any video or audio recording of the incident. In fact, Const. Page had been provided with a copy of the audio-visual recording of the incident and he had viewed it before or in the course of preparing his report.

[19] Nowhere in the report does Const. Page say it is intended to be a report setting forth his memory of the incident without regard for other information that had come to his attention post-event, such as the video. Nowhere in the report does Const. Page acknowledge that his recollection of events is quite obviously contradicted by the audio-visual recording.

[20] There is very little of substance in the report that is accurate. Const. Page acknowledged that to be the case in the course of his evidence, but testified that it was a reliable record of his involvement in the incident as he remembered it at the time. The report is replete with factual inaccuracies:

- “Apparently, the arrested party would not give their name. I attended on my own. Towards the end of my attendance, I was joined by Const. Poulin”. The audio-visual recording clearly indicates that Ms. Assimes had received full cooperation from Kerr. Assimes was in the process of writing up a report to crown. I find that Kerr had provided his name to her. Const. Page never asked for his name. Const. Page did not attend on his own. Const. Poulin was with Const. Page in the office throughout the incident.
- “He gave a 1,000 yard stare. I handcuffed him quickly.” The DVD contradicts both statements. While it is not possible to clearly see Kerr’s gaze, he remains seated calmly on the bench, Const. Page slowly dons protective gloves, and he approaches Kerr without haste, telling him to stand up and to put his hands behind his back. None of Const. Page’s actions are consistent with any perception of a potential for difficulty when dealing with Kerr. Const. Poulin testified that he did not observe any assaultive cues in the course of the officers’ dealings with Kerr.
- “I instructed him to stand up. He followed that direction, but turned away from. [sic] I reached out towards him and grabbed his left left arm [sic]. I felt him move

forward and away from me. I moved forward towards him. I misjudged the distance and stepped on Kerr's right calf and ankle. I lost my balance and fell forward into Kerr, pushing him back into the wall. The impact with the wall caused a softball sized hole in the drywall. Kerr unsuccessfully attempted to pull away. I regained my balance, and full control of Kerr and escorted him to the police car, using an arm lock. The escort was uneventful." This description bears no relationship whatever to the manner in which Const. Page dealt with Kerr. Rather than instructing Kerr to stand up, Const. Page gruffly grabbed him and pulled him up and immediately placed him in an arm lock and headlock. Const. Page testified that his purpose in taking hold of Kerr as he did was to pin him against the wall in order to assert control over him. The DVD clearly indicates that Const. Page never lost his balance, nor did he step on Kerr's right calf and ankle and Kerr never attempted to resist any of Const. Page's actions. Simply stated, for whatever reason, Const. Page applied wholly unnecessary and inappropriate force to Kerr's person.

[21] The transcript of the interview with Staff Sgt. Vreeman on March 1, 2011 reflects the fact that Const. Page stood by his assertion that the stare or the eye lock that he detected from Kerr was unnerving, repeated his assertion that he told Kerr to stand up before he grabbed him to put him in an arm lock, and repeated his assertion that he lost his balance which caused him to step on Kerr's calf and ankle thereby causing Kerr to fall into the wall.

### *Analysis*

[22] In both the duty report and the interview, Const. Page's basic assertion was that, as he recalled the incident, he did nothing but subdue an individual whom he perceived to be threatening him with stares and body motions that suggested fight or flight. Counsel on his behalf attributes the obvious discrepancies between his statements, verbal and oral, and the audio-visual recording to the fact that human perception and memory tend to be dynamic with the result that one may honestly perceive and remember a state of affairs that does not conform to reality.

[23] The argument might be more persuasive if there were any acknowledgment by Const. Page in the duty report that his perception of events as he remembered them differed from the audio-visual recording that he had been afforded the opportunity to observe and which so clearly demonstrates the nature of his actions. In my view, it does not suffice to say that marked differences between the report and the audio-visual

recording must be rationalized on the basis that misperception and a poor memory combined to produce the content of the duty report.

[24] Nowhere in the duty report does Const. Page say or suggest that because of the passage of time he was unable to accurately recall what happened some 15 months before the report was made. At no point does he say that he acted as he did because he may have incorrectly perceived Kerr's actions, a fact that might explain the differences between the recording, the duty report, and what was said in the interview. Rather he positively asserts that Kerr's conduct justified the officer's actions. Neither Ms. Assimes nor Const. Poulin perceived any threatening actions on the part of Kerr and testified to surprise at the fact that Const. Page had applied force to Kerr.

[25] If Const. Page's evidence is to be accepted on this point, he told both Ms. Assimes and a supervising officer that the incident would probably be the subject of investigation. Notwithstanding that he was aware from the outset of the fact an investigation might ensue, he made no notes of the incident, or, if he did, none were tendered as evidence. In addition, the general occurrence report authored by Const. Page suggests nothing but the ordinary apprehension of a suspected shoplifter.

[26] In sum, I do not accept Const. Page's evidence that he truly recounted the incident as he recalled it in his duty report or as he again described its basic elements to Staff Sgt. Vreeman. It follows that I do not accept the submission that Const. Page was mistaken but honest in his duty report about the nature and character of the events, his actions, and those of Kerr. In my opinion, the exculpatory explanations offered by Const. Page on both occasions were contrived and intended to mislead others so that they would believe his use of force was justified in the circumstances. Both the duty report and Const. Page's statements in the course of the interview are so seriously contradicted by the audio-visual recording of the officer's conduct and actions that they have to be seen as unbelievable. Nothing but intent to mislead can explain the contradictions.

[27] Const. Page testified that he was under stress at the time because of work-related and personal issues so that his judgment and patience may have been adversely affected at the time of the incident. An explanation that attributed the officer's actions to stress



with the result that they were out of character might have been better received than was his description of and attempt at justification for conduct that bore no relationship to the reality.

[28] I find that Const. Page knew that his description of the incident as it unfolded was false or misleading. The allegation of assault and, with a single exception, the allegations of deceit by the making of false or misleading written or oral statements have been substantiated on the balance of probabilities.

[29] The exception pertains to the allegation that in the course of the interview with Staff Sgt. Vreeman Const. Page said that he told Ms. Assimes there was likely to be an investigation and that someone would come by to photograph the wall, to obtain the audio-visual recording of the incident, and to obtain a statement about the incident from her. Ms. Assimes's evidence on the point is not sufficiently affirmative to warrant a finding on the balance of probabilities that she had no post-incident discussion with Const. Page, or if she did, that the taking of pictures and the procurement of the audio-visual recording and her statement were part of the conversation. That allegation has not been proved on the balance of probabilities.

[30] Pursuant to s. 126 of the *Police Act*, I invite the parties to make submissions with respect to the appropriate disciplinary or corrective measures in relation to the allegations of deceit that have been proved, and the allegation of assault that has been admitted.

DATED at Vancouver, British Columbia, the “25<sup>th</sup>” day of February, 2013.

“Ian H. Pitfield”

Ian H. Pitfield  
Adjudicator