



Office of the
Police Complaint Commissioner

British Columbia, Canada

CONCLUSION OF PROCEEDINGS

(Pursuant to s.133 (6) of the *Police Act*)

Date: February 14, 2012
OPCC File No: 2010-5032T
DA File No: 2010-002

To: Mr. Frank Blair c/o Mr. Stephen Suntok (Complainant)

And to: Sergeant George Chong (Former Member)
Victoria Police Department

And to: Chief Constable Jamie Graham (Discipline Authority)
Victoria Police Department

On January 15, 2010, Mr. Frank Blair was arrested by members of the Victoria Police Department for an alleged breach of a Court ordered curfew. It was later determined that the curfew had been lifted earlier as reported by Mr. Blair at the time of his arrest and incarceration but the police information system had not been updated with this information.

While Mr. Blair was in custody he was taken to an area of the jail for fingerprinting. During the fingerprinting process Sergeant George Chong applied a vascular neck restraint to Mr. Blair, which rendered him unconscious. While unconscious, Mr. Blair was allowed to fall forward onto the floor in an uncontrolled manner resulting in significant injuries to his face. Mr. Blair regained consciousness but was unable to stand. Despite these injuries the fingerprint process continued while Sergeant Chong supported Mr. Blair. Mr. Blair was placed in a jail cell and forty-five minutes later he was taken to the hospital where he received medical attention.

On January 22, 2010, the Office of the Police Complaint Commissioner received a request from Staff Sergeant Brian Fox, of the Victoria Police Department's Professional Standards Section, for an Order for Investigation pursuant to section 55(3) of the *Police Act* as it was then, with respect to the arrest of Mr. Blair and the subsequent events in Victoria Police cells.



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On January 22, 2010, I issued an Order for Investigation as the information received from Staff Sergeant Fox contained allegations of misconduct that, if proven, could constitute one or more disciplinary defaults under the *Police Act Code of Professional Conduct Regulation*.

On January 26, 2010, a 'Form 1' record of complaint was received from Mr. Blair, which included the above allegations. As a result, Mr. Blair was granted full rights as a formal complainant as provided by the *Police Act*.

Sergeant Glen Shiels, a senior officer with the Victoria Police Department's Professional Standards Section, was assigned to conduct the *Police Act* investigation. At the request of the Victoria Police Department, the Vancouver Police Department commenced a parallel criminal investigation into possible assault charges against Sergeant Chong. A Report to Crown Counsel was submitted on July 7, 2010, and one count of assault was subsequently approved against Sergeant Chong.

Based on Sergeant Shiels' Final Investigative Report, on November 24, 2010, the Discipline Authority, Chief Constable Jamie Graham rendered his decision and determined that the members who arrested Mr. Blair were acting in good faith as they were relying on information which was on the police information system at the time. The Discipline Authority also determined that the available evidence appeared to support that the force used by Sergeant Chong was not necessary and that his subsequent care of Mr. Blair was inadequate. Chief Constable Graham determined that the allegations of abuse of authority and neglect of duty appeared to be substantiated against Sergeant Chong and remitted the matter to a discipline proceeding.

On February 3, 2011, Chief Graham requested that I suspend the *Police Act* proceedings on the basis that there existed a real risk that the discipline proceeding could interfere with the ongoing criminal prosecution. On February 16, 2011, I acceded to Chief Graham's request and issued a suspension of the *Police Act* proceedings. In granting the suspension I was mindful that the criminal matter would explore the same issues as the *Police Act* matter. It was my view that the Discipline Authority would be able to examine and assess the evidence presented at the criminal trial for the purposes of the discipline proceeding.

Following the conclusion of the evidentiary stage of the criminal proceedings, on July 13, 2011, Chief Graham requested that the suspension of the *Police Act* proceeding be lifted and the discipline proceeding commence. After considering the matter, I acceded to his request and the *Police Act* process was permitted to proceed. What remained in the criminal proceedings was the decision of the court.

On August 4, 2011, a discipline proceeding was held before Chief Constable Graham. On September 7, 2011, Chief Constable Graham issued his decision. Chief Constable Graham found as follows:

Allegation One: Abuse of Authority pursuant to section 77(3)(a)(ii)(A)

That on January 15, 2010, it is alleged that Sergeant George Chong acted in a manner to wit: used unnecessary force on Frank Blair during the fingerprinting process.

- Member reply to allegation: Deny
- Finding: Not proven

Allegation Two: Neglect of Duty pursuant to section 77(3)(m)

That on January 15, 2010, it is alleged that Sergeant George Chong acted in a manner to wit: failed to promptly and diligently care for Frank Blair's injuries.

- Member reply to allegation: Deny
- Finding: Proven

After receiving submissions from Sergeant Chong's legal counsel, Mr. Dennis Murray, Chief Constable Graham issued his Disciplinary Disposition record on September 20, 2011. With respect to allegation two, the following discipline and corrective measures were imposed:

Discipline and corrective measures:

- Suspension without pay for 5 days
- Upon return to duty, Sergeant Chong is to be under close supervision with four monthly reports to an officer in charge.
- After four months, this sanction will be reviewed and based on the review, will continue, or will be removed.

On November 22, 2011, the Honourable Judge Weitzel rendered his decision and found Sergeant Chong guilty of the assault of Mr. Blair. Sergeant Chong received a suspended sentence and 12 months of probation, during which he will be required to complete any programs that his probation officer sees fit.

On December 19, 2011, our office received information from the Victoria Police Department that Sergeant Chong had resigned from active service on December 16, 2011, with an administrative retirement date effective February 1, 2012.

I am at the stage of the Police Complaint Process where in my gatekeeping role I must decide whether to arrange a Public Hearing or Review on the Record, or allow the corrective and/or disciplinary measures issued at a discipline proceeding stand as final and conclusive.

I am faced with the unusual circumstance of two inconsistent findings from two independent processes. A Provincial Court Judge has convicted Sergeant Chong of assault, having received evidence, including testimony from all the relevant witnesses to this event including Sergeant Chong. The applicable standard in criminal matters is proof beyond a reasonable doubt, a high standard.

The Discipline Authority reviewed the transcripts of the criminal proceedings and received testimony from Sergeant Chong during the course of the discipline proceedings. The applicable evidentiary standard is proof based on a balance of probabilities, or more likely than not.

It is a rare occurrence in which we have both criminal and conduct proceedings arising out of the very same subject matter. The risk associated with dual proceedings is the potential for inconsistent outcomes, which has materialized in the present matter.

With the benefit of hindsight, I realize that I should not have acceded to the request to lift the suspension on the *Police Act* matter until a determination had been made in the criminal proceedings. If I had followed this process, the subsequent *Police Act* process would have had the benefit of the factual findings of the court, as well as the law as it relates to dual proceedings in terms of outcome.

Having reviewed this matter my gatekeeping function can be distilled down to the decision whether to arrange a Review on the Record to reconcile the inconsistent determinations; or conclude the matter and takes procedural steps to prevent this incongruity from occurring in the future.

Having considered the factors that guide me in my decision making pursuant to the *Police Act*, I am in agreement with the Discipline Authority's decision that Sergeant Chong neglected his duty to provide prompt and diligent care for Mr. Blair's injuries.

I have a reasonable basis to believe that the Discipline Authority's finding in terms of Sergeant Chong's use of force against Mr. Blair is incorrect. However, I am of the view that the public interest would not be served by arranging a Review on the Record in this matter, as there has been a comprehensive examination of the incident in the public domain through the criminal process, and the interests of transparency and accountability has been met.

I also have considered the fact that Sergeant Chong has retired from policing and currently remains bound by a probation order, the focus of which is remedial and corrective. A Review on the Record would only result at most with a change in his Service Record of Discipline to align with the findings of the court in this matter. The public interest would not be served with the expense associated with this process, where the officer will no longer be engaged in policing. A criminal conviction constitutes a significant record of Sergeant Chong's conduct in this matter.



Stan T. Lowe
Police Complaint Commissioner