

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

AND

IN THE MATTER OF POLICE DEPARTMENT OF THE

DECISION ON SECTION 117 REVIEW OF FINAL INVESTIGATION REPORT

NOTICE TO:

AND TO:

AND TO: Chief Constable

AND TO: Stan T. Low (Police Complaint Commissioner)

I INTRODUCTION

1. Constable _____ of the _____ Police Department is alleged to have committed three counts of misconduct. The alleged misconduct arises from _____ arrest and detention of the complainant, _____ on April 11, 2013. _____ was arrested for the offence of assault and detained in police cells for a numbers of hours. The core of the complaint against Cst. _____ is that _____ only investigated one side of the alleged assault – the alleged victim's side – before arresting and detaining _____. Although _____ had time to do so, Cst. _____ made no attempt to speak with _____ or other persons who were present at the time of the alleged assault until after _____ had arrested _____.
2. The assault is alleged to have occurred on April 1, 2013 ("April 1") at the _____ on _____ in _____. The alleged victim, _____ was a client of _____ and _____ was adjuster. _____ was 63 years of age at the time; _____ was 28 years of age.

3. made a complaint to the Police Complaint Commissioner (the "PCC") pursuant to s. 78 of the Police Act (the "Act"). Chief Constable of the Police Department , as the Discipline Authority ("DA"), initiated an investigation of the complaint and directed Sergeant to conduct the investigation. Sgt. did so and ultimately concluded that the allegations of misconduct by Cst. under s. 77 of the Act were not substantiated. Chief Constable agreed with Sgt. that the allegations were not substantiated. The PCC concluded there was a reasonable basis to believe Chief Constable decision was incorrect. I was therefore appointed by the PCC to conduct an independent review of the DA's decision pursuant to s. 117 of the Act.
4. On Wednesday, March 18, 2014, I received the investigating officer's report as well as the evidence and records referred to in the report, electronic copies of audio and video recordings, and the other required documents. The Act allows ten business days for me to conduct my review and notify the parties of my decision.
5. The focus of my Review is on Cst. conduct, not conduct. Whether did or did not assault is not an issue for me to decide. The issue for me to determine is whether Cst. conduct in arresting and detaining on April 11, 2013 constitutes misconduct under the Act. This requires me to assess Cst. reasons for arresting and detaining and the adequacy of investigation prior to doing so. As such, whether did or did not assault does not affect my analysis or my decision.
6. I will first review some of the Background to provide further context.

II BACKGROUND

7. and returned in March 2012 from a lengthy holiday to find their residence in had suffered very extensive water damage. The

damage to their home and personal property amounted to hundreds of thousands of dollars and they were forced to reside elsewhere in rented premises. They were still living in rented premises in April 2013.

8. and had home insurance and they made a claim through their insurance broker, . was assigned as their claims adjuster.

9. and had many communications over the months leading up to attendance at on April 1. The evidence suggests that the relationship between and had become strained. I expect that and were doing all they could to assist and , but was understandably upset about the damage to home and property and frustrated about the progress of the restoration and compensation.

10. was asked to pick up monthly rent cheque at . arrived at approximately 1:20 pm on April 1 and entered the reception area. While there, a secretary asked to sign a Proof of Loss form. declined to do so as the amount stated, approximately \$419,000, appeared incorrect to . asked the secretary for an explanation. came out of office and asked what did not understand. Thereafter, the two of them stood in the reception area at the front of the office and discussed the Proof of Loss and other insurance-related matters for approximately 15 to 20 minutes. The discussion became acrimonious and evolved into a disagreement as to whether had on another occasion called ' ' .

11. According to , at this point demeanour changed. raised voice and right hand, demanded leave immediately and, ultimately, grabbed left wrist and shoved out the door. said almost fell over as went through the door. allegation of assault is supported by an abrasion and redness on left forearm.

12. According to _____, never touched _____. _____ denial is supported by a number of the _____ employees and _____.
13. Shortly after the alleged assault, _____ phoned the _____ to report the incident. _____ was asked to attend the Detachment the following day and did so. Cst _____ was on duty when _____ arrived and was assigned to investigate _____ allegation. This ultimately led to Cst. _____ arresting and detaining _____ on April 11 and _____ complaining to the Office of the Police Complaint Commissioner (the "OPCC") the following morning in relation to _____ arrest and detention.

III THE COMPLAINT

14. _____ complaint reads as follows:

I was arrested at my place of employment over 1 week after an alleged incident of assault. No investigation was done to show that the allegations were false. I was arrested at my place of employment and was kept in a jail cell for over 5 hours. I repeatedly knocked on the door of the cell to ask when I would be let out but no one came. I was never informed what was going on and believe that the entire process was done without any regard for me as an innocent person. The police had no evidence and acted like cowboys.

15. _____ has no criminal record. It was, no doubt, an embarrassing and upsetting experience for _____ to be arrested at _____ place of work, to be taken in the back of a police vehicle to the _____, and to be "booked" and held in police cells for a number of hours. This experience must have been even more distressing and upsetting given that prior to being arrested _____ was never provided the opportunity to explain _____ side of what occurred and produce witnesses who could support _____ explanation.

IV THE ALLEGED MISCONDUCT

16. Misconduct is defined under section 77 of the Police Act (the "Act"). There are three counts of possible misconduct by Cst. identified in the Notice of Appointment of Retired Judge:

Allegation 1 – Abuse of Authority

It is alleged that Constable committed the misconduct of Abuse of Authority as per section 77(3)(a)(i) of the *Police Act* by arresting without good and sufficient cause.

Allegation 2 – Abuse of Authority

It is alleged that Constable committed the misconduct of Abuse of Authority as per section 77(3)(a) of the *Police Act* for Oppressive conduct towards a member of the public (by holding in a jail cell for five hours without explanation).

Allegation 3 – Neglect of Duty

It is alleged that Constable committed the misconduct of Neglect of Duty as per section 77(3)(m)(ii) of the *Police Act* by basing the arrest and detention of on an inadequate investigation.

V THE PROCESS

17. Sgt. submitted his Final Investigation Report to the DA and the PCC on December 2, 2013. recommended that the allegations against Cst. be found not substantiated. The PCC, Stan Lowe, rejected the Report and on December 16, 2013 directed that further investigative steps be taken. Sgt. did so and submitted a Revised Final Investigation Report on January 20, 2014. He again recommended that the allegations against Cst. be found not substantiated. On February 14, 2014, Chief Constable issued his decision agreeing with Sgt.
18. The PCC concluded there was a reasonable basis to believe that the decision of the DA was incorrect and appointed me to review the matter and arrive at an independent decision pursuant to s. 117(4) of the Act. My task is to determine

whether the evidence appears sufficient to substantiate any of the allegations of misconduct and, if so, assume responsibility as the DA and give notice of the next steps.

VI THE EVIDENCE

19. I will only review evidence that is relevant to my decision.
20. In conducting this review I am guided by the fact there is no dispute that Cst. _____ made the decision to arrest and charge _____ without first attempting to interview _____ or anyone else at _____ who may have witnessed the alleged assault. I am also guided by the fact my task is to focus on the adequacy of Cst. _____ investigation and the evidence gathered prior to deciding to arrest and detain _____. As such, and as explained earlier, the evidence obtained from _____, and others working at _____ concerning the alleged assault do not assist me as I am not deciding whether allegations are accurate. Cst. _____ conduct in arresting and detaining _____ is either misconduct or not, regardless of whether the alleged assault occurred.

A Cst. _____ Investigation

21. Cst. _____ was working the afternoon shift on April 2, 2013 when _____ was assigned to meet with and investigate _____ assault allegation. _____ had a five page hand-written statement already prepared and gave it to Cst. _____. Cst. _____ then spent approximately three hours interviewing _____. _____ made notes in _____ police notebook as they discussed what had occurred at _____ on April 1, the events leading up to April 1, and what did immediately after the alleged assault.
22. _____ description of what occurred varied slightly but essentially _____ told Cst. _____ that during _____ discussion with _____ they had a disagreement as to whether _____ had on another occasion called _____ a "needy _____".

said that it was during this exchange when demeanour changed. raised voice and also raised right hand. demanded loudly that "leave", "go" and "get out of here". said was so angry that had a look of rage in eyes. said started towards the door afraid for safety. said that as did so, said "go now and don't come back" and that would no longer be their adjuster.

23. said stopped to say something to and said "get off this property – you are here illegally, get out". said thought was going to hit and raised left arm to protect . said grabbed left wrist and shoved out the door. said that in shoving , also forced elbow into left breast where recently had surgery. said that in the process of grabbing left arm in the area of wrist, twisted bracelet watch on left wrist and caused an abrasion. said almost fell over as was pushed out but was able to turn around and run to car from where phoned at . said left a voice mail message explaining what had happened.

24. said that after phoning , phoned the to report what had occurred and was asked to come back the next day when an officer would be available to speak with . said then drove back to and spoke with . also worked at and was someone knew well. said told what had occurred and had said would arrange to have removed from claims file.

25. During the interview on April 2, told Cst. that was 27 or 28 years of age, worked out regularly, and was approximately 6 foot two or three inches tall and weighed approximately 190 to 200 pounds. also told Cst. that was alone when went into and had not noticed any other customers present. said that while there were other

employees present, was not sure how co-operative they would be because understood was in charge of the business.

26. Cst. observed an injury to left arm. said there was a red mark approximately two inches by two inches as well as some bruising that was starting to develop around the area of the injury. took photographs of those injuries. Cst. told Sgt. that the injuries observed were consistent with description of the alleged assault.
27. said also had small red spots on the left side of breast (that Cst. did not ask to see nor that wanted to have photographed) but which said physician had observed when saw earlier that day (April 2) when went for medical treatment for injuries. Cst. obtained the physician's name and business address and had sign a Consent Release Form to obtain that information. also obtained phone number from .
28. reported that had phoned that morning (April 2) and given the name of new adjuster. had also told that had not shoved or pushed and that had been told had said that. asked if had gone to police and when said had, said "Oh good, I can't wait". also reported that and were ordinary people and that had previously worked for Welfare for 5 years, Mental Health for 21 years, and Child Protection for 9 years.
29. Cst. checked the RCMP "PRIME" system for any record of having involvement with the police or the criminal justice system. learned that "has no criminal record, no convictions and nothing presently before the Courts" and "has 37 PRIME files in which was primarily the Complainant". There were, however, two PRIME files noted by Cst. .

30. One PRIME file listed _____ as Suspect Chargeable and stated the following occurred on April 4, 2011:

Complainant, _____ reported to Cst _____ that on 2011-04-08 had a coffee drink thrown onto _____ Honda Civic while driving on _____ from _____ towards _____ reported the vehicle to be a brand new grey Honda Accord with BC plates _____ stated the incident started with the driver tailgating _____, then passing _____ throwing the drink and pulling in front of _____ and hitting brakes. _____ requested the driver be warned and did not request charges as _____ does not wish to attend court. _____ stated a friend in a separate vehicle did witness the encounter if required as the friend texted _____ about what _____ observed. Cst _____ called the registered owner, _____ who admitted to being the driver in the incident but stated _____ also threw an empty pop bottle at _____ but would not state if that was before or after _____ threw the coffee.

_____ was very confrontational and demanded member's name despite being told at the beginning of the call. _____ stated all _____ calls are recorded and challenged member to charge him. Cst _____ provided name and badge number to satisfy policy. _____ appeared to have an anti-authority / police attitude, vet stated _____ works with police all the time as an insurance investigator. _____ finally calmed down and accepted the verbal warning. _____ last file for CPIC/Index checks was 2008. _____ appears to be a chronic complainant on PRIME for driving complaints. Additionally is on PRIME as a Suspect in PRIME file

31. The second PRIME file _____ stated the following occurred on June 15, 2009:

2009-06-15 at approximately 1436 hours, Cst. _____ was stopped at the Chevron located at _____ and _____ when _____ attended to report an incident on road rage. Simultaneously, the suspect _____, arrived and began verbally arguing with _____. A 3rd male, _____, appeared and commenced yelling at _____. 3 parties were separated, identified, and oral statements obtained. _____ changed lanes in front of _____, who subsequently changed lanes in front of _____. Although the 3 reaccounts of events contain consistent details, the onus of fault differs. Because _____ was deemed to be an independent witness who supported statement, _____ was determined to be the aggressor. _____ was unwilling to proceed with charges, therefore, no Violation Ticket issued.

32. After checking the PRIME files, Cst. _____ phoned _____ and left a phone message, sent the Consent Form to _____ physician to obtain the medical records, and confirmed from _____ records that _____ had phoned

the at 2:19 pm on April 1. On April 3, Cst. spoke with who said that had not spoken with but had left a phone message.

33. Cst. was off work from April 4 to 7. When returned to work on April 8, 2013, phoned and spoke with . told that had come to see on the afternoon of April 1, had told what had happened at , and showed the injury on left arm. said was visibly upset and shaken. In response to questions from Cst. , said had known for several years and, in opinion, was an honest and truthful person. said would provide a written statement to Cst. via email.

34. Later that day, Cst. met with and listened to the voice mail messages had left for on April 1. noted that sounded upset and was crying and told that had physically pushed out the door and told was illegally on the property. Cst. made an audio recording of the voice mail messages.

35. On April 9 and 10, Cst. was assigned to other duties.

B The Arrest

36. On April 11, Cst. and Cst. took separate police vehicles to . Cst. intention was to arrest and have Cst. drive back to the Detachment while attempted to interview the employees. After doing so, he would return to the Detachment to obtain a statement from before having the Officer in Charge "release" . said also believed having off the premises would facilitate obtaining candid statements from the employees.

37. Cst. said he arrived at at approximately 4:35 pm and entered the premises with Cst. . asked one of the employees if could speak

with . came out and invited the police into office and said was looking forward to talking with them and invited the officers to sit down. Cst. said that would not be necessary as they were there to arrest . asked if had a lawyer and learned did. then gave an opportunity to retrieve wallet, phone and car keys before being led out of the office into the front parking lot. told Cst. did not know why was being arrested and would have been more than willing to come to the police station to speak to the investigators. said had not done anything and that wanted to tell side of the story. Cst gave the usual police warnings and then had Cst. drive him to the Detachment.

38. As Cst. was leading out of , asked Cst. why had not first spoken to son and heard side of the story or spoken with any of the witnesses in the office. Cst. said would be back shortly to speak with . When Cst. did return, noticed that most of the staff had left the office. told Cst. that had seen the whole incident and that had not laid a hand on . said that while was originally going to provide a statement had changed mind and was not going to do so nor would any of staff until spoke with lawyer.
39. Cst. returned to the Detachment at 5:10 pm and at 5:32 pm left a voice mail message for , counsel for the . At 5:35 pm spoke to in jail cell. said that had spoken to and declined to provide a statement.
40. Sgt. was the jail NCO that evening. had assisted with "booking" and arranging for to speak to . Sgt. also spoke with and told there was a high likelihood would be released on a Promise to Appear or Undertaking. Sgt. did so after attending police cells at approximately 9:35 pm and speaking with .

41. The decision to release [redacted] was Sgt. [redacted] responsibility as the officer in charge. To do so [redacted] needed to obtain certain information from Cst. [redacted]. The delay in releasing [redacted] was explained in Sgt. [redacted] email message to Sgt. [redacted]:

I released [redacted] approximately 4 ½ hours after [redacted] arrived at [redacted] cells. As part of my duties as the Jail Supervisor, I am required to handle any and all incoming calls that require a supervisor's attention, assist the communication staff with any "in progress" or high priority calls, guide members in their investigations that need immediate direction and book in any prisoners as they arrive.

I prepare release documents in a timely manner to the best of my abilities; however, it is always dependent as to whether I am required for other more immediate tasks. On April 11, 2013 when I did release [redacted] at approximately 9:30 pm, it was after I had spoken with Cst. [redacted] to confirm [redacted] background and discussed the most appropriate release conditions. I was unable to speak to Cst. [redacted] any earlier as I was performing other duties and Cst. [redacted] was indisposed at the front counter speaking to [redacted] and later called out from the office to assist on a call on [redacted].

VII THE ALLEGATIONS

A The Applicable Legal Principles and Criminal Code Provisions

42. The allegations on this Review centre on Cst. [redacted] decision to arrest and detain [redacted] for the offence of assault and whether [redacted] should have done so before completing [redacted] investigation. I will therefore first consider the applicable Code provisions and legal principles before providing my reasons with respect to each of the allegations.

(a) **Assault**

43. Cst. [redacted] arrested [redacted] for the offence of assault. Assault is defined by s. 265 of the Criminal Code (the "Code"), which states, in part:

265. (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose;

44. description of what occurred clearly constitutes an assault.

(b) The Power to Arrest

45. Cst. authority to arrest is derived from s. 495 of the Code which states, in part:

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;

....

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

...

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, ...

46. Also germane to Cst. decision to arrest and detain is s. 497 of the Code:

497. (1) Subject to subsection (1.1), if a peace officer arrests a person without warrant for an offence ... the peace officer shall, as soon as practicable,

(a) release the person from custody with the intention of compelling their appearance by way of summons; or

(b) issue an appearance notice to the person and then release them.

(1.1) A peace officer shall not release a person under subsection (1) if the peace officer believes, on reasonable grounds,

(a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, 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,

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

(iv) ensure the safety and security of any victim of or witness to the offence;

(c) Reasonable Grounds to Arrest

47. The leading case with respect to what constitutes reasonable grounds to arrest remains *R. v. Storrey*, [1990] 1 S.C.R. 241. In *Storrey*, the Supreme Court of Canada stressed the importance of ensuring that police officers have reasonable grounds [i.e. reasonable and probable grounds] to arrest but also distinguished between the standard of proof required to arrest someone from the standard of proof required to obtain a conviction. It said at pages 249 - 251:

The importance of this requirement to citizens of a democracy is self-evident. Yet society also needs protection from crime. This need requires that there be a reasonable balance achieved between the individual's right to liberty and the need for society to be protected from crime. Thus the police need not establish more than reasonable and probable grounds for an arrest.

...

In summary then, the *Criminal Code* requires that 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.

(d) **The Test on Review**

48. We expect police officers to conduct themselves in a reasonable, responsible, and competent manner, using their experience, training, and judgment, as they make the decisions they are required to make on a daily basis to fulfill their responsibilities. These responsibilities include making decisions with respect to whether to use force and whether to arrest and detain individuals. We do not expect perfection from police officers any more than we do from any other professional but we do expect them to have reasonable grounds for the decisions they make.
49. What constitutes reasonable grounds was considered in *Berntt v. City of Vancouver*, 1999 BCCA 345, where Southin J.A. of the British Columbia of Appeal dealt with the use of force by a police officer in the context of a riot. She said the following with respect to the meaning of reasonable grounds and the role of a judge when reviewing whether a police officer had such grounds:

[31] The phrase "reasonable grounds" is found in many provisions of the *Criminal Code*.

[32] "Reasonable" is a word which, in common speech, is sometimes used, erroneously, to mean "right". It is the antonym of "unreasonable". In *Secretary of State v. Tameside*, [1976] 3 All E.R. 665 (H.L.) at 703, Lord Russell of Killowen remarked, "History is replete with genuine accusations of unreasonableness when all that is involved is disagreement, perhaps passionate, between reasonable people."

[33] In *Liversidge v. Anderson*, [1941] 3 All E.R. 338 (H.L.) at 357-58, [1942] A.C. 206, cited by Cory J. in *R. v. Storrey*, [1990] 1 S.C.R. 241 at

250, Lord Atkin, in the course of construing a regulation promulgated for the Defence of the Realm, said:

A judge's decision is not substituted for the constable's on the question of unlawful arrest, nor does he sit on appeal from the constable. The judge has to bear in mind that the constable's authority is limited, and that he can arrest only on reasonable suspicion, and the judge has the duty to say whether the conditions of the power are fulfilled. If there are reasonable grounds, the judge has no further duty of deciding whether he would have formed the same belief, any more than, if there is a reasonable evidence to go to a jury, the judge is concerned with whether he would have come to the same verdict.

50. This Review is not a criminal prosecution or a civil trial but the analysis in *Berndt* also applies. The test for an adjudicator or judge reviewing a police officer's decision to arrest and detain is reasonableness, not correctness. The question for me is not whether I would have made the same decision as Cst. but whether the decision did make was reasonable in the circumstances.

51. I respectfully adopt the following passage from the decision of Adjudicator Ian H. Pitfield in the Matter of the Police Act and Constable Daniel Dickhout, Public Hearing 10 – 3, at p. 12:

The adjudicator must not assess conduct with the benefit of hindsight and must not substitute his or her judgment as to what could or should have been done in the circumstances for that of the officer. The question is whether any belief the officer had with respect to the need for force and the amount of force required was reasonable, and is not to be answered by reference to what others might have done in similar circumstances.

52. While the issue before Adjudicator Pitfield was the use of force, not a decision to arrest and detain, his reasoning with respect to the scope of review is equally applicable.

53. Reasonable police officers might disagree whether it was or was not necessary to arrest and detain but that is not the legal test I must apply. The test is

whether Cst. subjectively and objectively had reasonable grounds to arrest and detain .

B Allegation 1 – Abuse of Authority

54. It is alleged that Cst. committed the misconduct of abuse of authority as per s. 77(3)(a)(i) of the Act by arresting without good and sufficient cause.

55. Section 77(3)(a)(i) states:

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

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

56. Abuse of authority has both a conduct element and a fault element. Here, the conduct element is arresting without good and sufficient cause. The fault element is doing so either intentionally or recklessly.

Analysis

57. There are two aspects to this allegation. First, did Cst. have reasonable grounds to believe had assaulted ? Second, if did, did Cst. also have reasonable grounds to believe it was necessary in the public interest to arrest and detain before Cst. completed investigation?

(a) Reasonable Grounds to Believe Assaulted

58. I am satisfied that subjectively and objectively Cst. had reasonable grounds to arrest for the offence of assault.

59. I earlier reviewed the investigation conducted by Cst. [redacted] of the alleged assault of [redacted]. [redacted] presented as a mature law abiding individual who had been employed in positions of responsibility in the past. [redacted] had no apparent motive to lie and mislead the police other than for the reason of being dismissed as a client of [redacted] and being forced to leave the premises.
60. Cst. [redacted] investigation included receiving a hand-written statement from [redacted] and interviewing [redacted] for approximately three hours. The observed injuries to [redacted] left forearm appeared consistent with [redacted] description of the assault. [redacted] had complained after the alleged assault forthwith to [redacted], [redacted], and the [redacted] credibility was supported by [redacted] who had known [redacted] for many years and believed [redacted] description of what had occurred. [redacted] description of [redacted] going into a "rage" and "needing anger management" was supported by past conduct of [redacted] recorded in two PRIME file entries. In short, [redacted] description of the alleged assault was consistent with narrative of what occurred, was consistent with [redacted] injuries, was consistent with [redacted] conduct after the event, and was consistent with the two PRIME file entries.

(b) Reasonable Grounds to Arrest and Detain

61. Sections 495(2) and s. 497(1.1) requires a police officer to consider whether it is necessary in the public interest to detain a person in custody or that the matter of their release be dealt with under another provision of the Code. Here, the other provision was s. 498 of the Code.
62. Cst. [redacted] told Sgt. [redacted] that [redacted] believed that a "no contact" condition should be imposed on [redacted] "...for the safety of [redacted] and to prevent the continuation of any further offence." Cst. [redacted] said that [redacted] was afraid of [redacted] and that [redacted] had personal information about [redacted] that would permit [redacted] to easily find or communicate with [redacted]. Cst. [redacted] explained that based on the two PRIME files and [redacted] description of the alleged assault, [redacted] was concerned that [redacted] had an explosive personality. [redacted] said that

although [redacted] already knew that [redacted] had complained to the police [redacted] might react and attempt to confront [redacted] if [redacted] found out that [redacted] was actually under investigation. [redacted] explained this concern further during [redacted] second interview with Sgt. [redacted] on January 22, 2014 at lines 46 – 58:

...what I think...that the real risk you have to look at is when [redacted] gets arrested by the police...or dealt with by the police, or [redacted] knows [redacted] is under investigation by the police when the police actually have contact with [redacted], at that point there's a strong potential for [redacted] to get upset again with [redacted] The relevant risk is going to be when the police have contact with [redacted] to do this investigation, whether [redacted] be arrested or spoken to or questioned or whatnot. And that was my concern is that at that point you have to be able to make sure [redacted] doesn't have the ability to go to one of [redacted] residences in [redacted], which [redacted] already has all of the information about [redacted]Like that's what I looking at is that there need to be conditions in place to protect – for the – for the safety of [redacted].

63. Cst. [redacted] intended to continue [redacted] investigation of the alleged assault and attempt to interview [redacted] and witnesses at [redacted]. [redacted] decided, however, using [redacted] judgment and experience as a police officer, that [redacted] probably had been assaulted and may be at risk of a further assault or intimidation in the absence of conditions imposed under s. 498 of the Code. As a result [redacted] made the decision to arrest and detain [redacted] in order to have conditions placed on [redacted] to protect [redacted], the alleged victim. The decision was not made for any apparent ulterior or improper purpose. Was it an unreasonable decision by Cst. [redacted]? If it was, it would appear to lack good and sufficient cause and the allegation would appear to be substantiated.

64. I find Cst. [redacted] decision to arrest and detain [redacted], subjectively and objectively reasonable in the circumstances for the reasons [redacted] has given. In hindsight, the decision to arrest and detain might appear unnecessary but Cst. [redacted] had to make the decision looking prospectively. [redacted] did so for the purpose of protecting [redacted]. [redacted] intended to continue [redacted] investigation in an effort to get [redacted] "side of the story". If the other employees present at [redacted]

had confirmed what said had occurred I expect there would little disagreement that imposing conditions on was necessary.

65. In the result, I find that arresting and detaining was done with good and sufficient cause. Accordingly, I find the evidence does not appear sufficient to substantiate Allegation 1.

C Allegation 2 – Abuse of Authority

66. It is alleged that Cst. committed the misconduct of abuse of authority as per s. 77(3)(a) of the Act for oppressive conduct towards a member of the public by holding in a jail cell for five hours without explanation.

67. Section 77(3)(a) states:

(a) "abuse of authority", ... is oppressive conduct towards a member of the public,

Analysis

68. The length of time required to release was, unfortunately, longer than it might have been. This was not, in my view, as a result of oppressive conduct by Cst. i.
69. was driven directly to the Detachment by Cst. was given an opportunity to speak with counsel. When Cst. arrived at the Detachment, spoke with in an effort to obtain a statement from . Like , declined to provide a statement on the advice of counsel. Cst. had certain paper work had to complete with respect arrest. was called away to the front counter to speak with and did so. explained to that the decision to release was up to the jail NCO.
70. Cst. then returned to paper work but was required to leave the Detachment to provide assistance to another police officer. returned at

approximately 9:30 pm and was told by Sgt. [redacted] that [redacted] was going to release [redacted].

71. The person responsible for releasing was Sgt. [redacted]. [redacted] was the officer in charge that evening. [redacted] explained the reason for the delay in [redacted] email message to Sgt. [redacted] on September 26, 2013. The delay in releasing [redacted] and the failure to keep [redacted] informed was the product of the resources available to the [redacted] that evening and not oppressive conduct by Cst. [redacted]. Accordingly, I find that the evidence does not appear sufficient to substantiate Allegation 2.

D Allegation 3 – Neglect of Duty

72. It is alleged that Cst. [redacted] committed the misconduct of neglect of duty as per s. 77(3)(m)(ii) of the Act by basing the arrest and detention of [redacted] on an inadequate investigation.

73. Section 77(3)(m)(ii) states:

(m) "neglect of duty" ... 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;

Analysis

74. The question raised by this allegation is whether, in the circumstances, Cst. [redacted] had a "duty" to conduct further investigation before [redacted] arrested and detained [redacted] ?
75. Police officers commonly arrest and detain individuals before they complete their investigation. They may do so for any number of proper reasons. It depends on the circumstances. A spouse may be arrested on an allegation of domestic assault before the police have completed their investigation. A person seen

running from an apparent robbery or break and enter may be arrested before the police complete their investigation. A murder suspect may be arrested in an effort to obtain a statement from him or her and then released as the investigation continues.

76. Here, Cst. [redacted] intended to continue [redacted] investigation after [redacted] had arrested [redacted] and had conditions imposed on [redacted] to protect the alleged victim, [redacted]. Was it a neglect of duty to arrest and detain [redacted] before [redacted] had completed [redacted] investigation or, at least, give [redacted] an opportunity to provide an explanation? Essentially, for the reasons I have given with respect to Allegation 1, I find Cst. [redacted] subjectively and objectively had good and sufficient cause to proceed as [redacted] did. Accordingly, I find that the evidence does not appear sufficient to substantiate Allegation 3.

VII CONCLUSION

77. For the reasons given above, I confirm the decision of Chief Constable [redacted]. I find that the evidence does not appear sufficient to substantiate Allegations 1, 2 or 3. I find the conduct of Cst. [redacted] does NOT constitute misconduct as defined under s. 77 of the Act.
78. Pursuant to s. 117(11) of the Act, my decision is not open to question or review by a court on any ground. It is final and conclusive.

Dated at the City of Vancouver, Province of British Columbia, this 2nd day of April, 2014.



WILLIAM B. SMART