



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH:2013-05
OPCC File: 2010-5401

NOTICE OF PUBLIC HEARING

(Pursuant to section 137(1) *Police Act*, R.S.B.C. 1996, c.267)

**In the matter of the
Public Hearing into the complaint against
Constable Taylor Robinson #2777 of the Vancouver Police Department**

TO: Ms. Sandy Davidsen (Complainant)
c/o Mr. Scott Bernstein

AND TO: Constable Taylor Robinson #2777
Vancouver Police Department (Member)

AND TO: Chief Constable Jim Chu
Vancouver Police Department (Discipline Authority)

WHEREAS:

Incident Summary:

1. On June 9, 2010, at approximately 3:30 pm, Sandy Davidsen was walking eastbound on East Hastings Street in the Downtown Eastside of Vancouver. Ms. Davidsen suffers from cerebral palsy and multiple sclerosis, which causes her to be unsteady on her feet and walk with a noticeable gait. Three members of the Vancouver Police Department (VPD) Beat Team, Constables Robinson, Thiara and Hill were walking three abreast in the opposite direction along East Hastings. As Ms. Davidsen and the three officers approached each other, a gap was created between the officers and Ms. Davidsen was able to walk through. During the course of passing between Constable Robinson and Constable Thiara, Constable Robinson turned slightly and pushed Ms. Davidsen. The force used

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was sufficient to cause Ms. Davidsen to fall to the ground. At approximately the same time, Constable Robinson stated, "don't touch a police officer's gun." Constable Robinson stood over Ms. Davidsen while she was attended to by a female civilian witness. Constables Thiara and Hill stood nearby.

2. When challenged about his actions by another female witness, Constable Robinson advised that Ms. Davidsen had grabbed or attempted to grab his police duty pistol. Approximately 20 seconds after Ms. Davidsen fell to the ground, all three members eventually turned and continued walking west on the sidewalk. Seconds later, Ms. Davidsen was assisted to her feet by the female witness and she carried on to her hotel.
3. That same evening, employees of the Lux Hotel learned of the incident and discovered that the incident had been captured by the building's exterior cameras. At approximately 10:14 pm that evening, VPD Communications received a call from an employee of the Lux Hotel, reporting that Ms. Davidsen had been assaulted by VPD members. VPD supervisors attended the Lux Hotel and viewed the video, obtained initial information and notified the Duty Officer and VPD's Professional Standards Section (PSS) of the incident and complaint.
4. On June 11, 2010, PSS members interviewed Ms. Davidsen at the Lux Hotel. Ms. Davidsen reported that she had been assaulted and despite being unsteady on her feet at the time, she did not understand why Constable Robinson would believe she would try to grab his gun.

Complaint Process and Investigation

5. After becoming aware of this incident, no attempt was made by the VPD to notify the Office of the Police Complaint Commissioner (OPCC) that a criminal complaint of assault involving one of its members had occurred. The explanation provided by PSS investigators for failing to notify the OPCC was that they were engaged in an "informal investigation." This explanation is lacking merit: police do not respond to criminal complaints against their members by engaging in informal investigations.
6. The conduct of VPD PSS members is concerning, as it appears that the seizure of the video, the subsequent interviews, and the failed attempt to informally resolve the matter was undertaken without jurisdiction. Furthermore, no attempt was made by VPD PSS to facilitate Ms. Davidsen's desire to lodge a formal complaint with the OPCC, nor to notify our office of the incident. The OPCC first received notice of this incident 19 days later, when Ms. Davidsen filed a complaint with our office on June 28, 2010. Ms. Davidsen's complaint was deemed admissible by our office.
7. Following consultation with our office on July 27, 2010, Chief Constable Chu of the Vancouver Police Department, requested the matter be investigated by an external police agency, and New Westminster Police Service (NWPS) PSS assumed conduct of the external *Police Act* investigation and conducted a criminal review. On November 10, 2010, the New Westminster Major Crime Unit submitted a report to the Criminal Justice Branch recommending a charge of assault contrary to s.266 of the *Criminal Code* against Constable Robinson. The Branch approved one count of common

assault and on May 9, 2011, the *Police Act* proceedings were suspended pending the outcome of the criminal proceedings in the matter.

8. A Stay of Proceedings on the assault charge was entered by Crown Counsel on February 29, 2012. The *Police Act* investigation suspension was lifted on March 5, 2012. The Final Investigation Report which had been submitted on April 29, 2011, was rejected by the Discipline Authority Inspector Steve Eely of the VPD, as he directed further investigation.
9. The Final Investigation Report was resubmitted on June 26, 2012, and was accepted as filed. In addition to the allegations of Abuse of Authority and Neglect of Duty, the investigator recommended that the Discipline Authority turn his mind to deceit as an additional misconduct committed in this case.

Discipline Authority Decision and Proposed Discipline

10. The Notice of Discipline Authority's Decision dated July 10, 2012, was received by our office July 13, 2012. Inspector Eely determined that the evidence appeared to support the allegations of misconduct against Constable Robinson for Abuse of Authority and Neglect of Duty; however, he did not find that Constables Hill or Thiara committed any misconduct pursuant to the *Police Act*. In addition, Inspector Eely determined there was no evidence to support a finding of deceit by Constable Robinson, involving the allegation that Constable Robinson made a false or misleading statement by reporting that Ms. Davidsen touched or grabbed his firearm.
11. On September 14, 2012, based upon my review of the evidence available at that time, I concluded that there was not clear, convincing and cogent evidence establishing on a balance of probabilities that Constable Robinson wilfully or negligently made a false or misleading statement regarding Ms. Davidsen touching or grabbing his gun. I also concluded that Inspector Eely appropriately determined that the conduct of Constables Thiara and Hill did not constitute misconduct. Accordingly, I did not appoint a retired judge to review this matter pursuant to s. 117 of the *Police Act*.
12. Inspector Eely offered Constable Robinson a Prehearing Conference which was completed on August 10, 2012. On August 13, 2012, the Prehearing Conference Agreement Report was rejected by this office noting that the proposed discipline of one-to-one training with VPD's Force Option Training Unit, advice to Constable Robinson's conduct, and a one eight-hour day suspension without pay did not adequately reflect or address the seriousness of Constable Robinson's misconduct. The matter was remitted to a Discipline Proceeding.
13. On August 16, 2012, Chief Constable Jim Chu delegated Superintendent Andy Hobbs of the Vancouver Police Department as the Discipline Authority to preside over the discipline proceeding in this matter. An extension to convene the discipline proceeding was requested by Inspector Mike Serr to allow time for Superintendent Hobbs to review records comprising the investigation

prior to convening the discipline proceeding. An extension to convene the discipline proceeding was granted until October 5, 2012.

14. A number of delays resulted between the time the discipline proceeding was first commenced to when it was concluded. The discipline proceeding first convened on October 4, 2012. The hearing was brief and no substantive matters were discussed. On November 23, 2012, an application was brought by Constable Robinson's counsel to delay the proceeding until sometime in April 2013. Counsel submitted that he was not available due to an unrelated criminal trial and that the discipline proceeding should be adjourned until the conclusion of the Human Rights Tribunal involving Constable Robinson scheduled to proceed in April 2013. It was argued that while other counsel could represent Constable Robinson, it would take time to bring new counsel up to speed on the matter. In addition, Constable Robinson's counsel suggested that the results of the *Police Act* proceeding could be used against Constable Robinson and have an adverse impact on him in the Human Rights Tribunal.
15. On December 19, 2012, Superintendent Hobbs provided a written decision granting the requested adjournment and set the dates of April 25 and 26 for the discipline proceeding to continue. On April 18, 2013, Superintendent Hobbs informed the OPCC by way of letter that counsel for Superintendent Hobbs had withdrawn and that new counsel for him had been appointed. The discipline proceeding could not proceed on the agreed date of April 25 as counsel required time to familiarize himself with this matter. On July 9, 2013, nine months after the discipline proceeding was first convened, submissions relating to this matter were made.
16. At the Discipline Proceeding, Constable Robinson denied the allegation of Abuse of Authority for intentionally or recklessly using unnecessary force on Ms. Davidsen. He admitted to the allegation of Neglect of Duty for failing to assist Ms. Davidsen after she was pushed to the ground.
17. Based on our review of the Discipline Proceedings, several issues and concerns arise based on the manner in which the Discipline Proceeding was allowed to proceed. Ms. Davidsen and material witnesses were denied the opportunity to participate in the proceeding, as there was no request for their attendance by the member. Only two police witnesses testified at the Discipline Proceeding, Constable Robinson and the external Investigator responsible for conducting the criminal and *Police Act* investigation. New evidence in terms of a supplemental Use of Force expert report retained by the member was submitted and accepted by Superintendent Hobbs. Superintendent Hobbs was clearly critical of the investigation into this matter, but did not take steps to direct further investigation to remedy his concerns. Instead he engaged in his own background investigation of the external Investigator completely outside the jurisdiction of the proceeding. In my view, the accountability of the proceedings and the search for the truth were significantly compromised.
18. On August 20, 2013, Superintendent Hobbs issued his decision substantiating the allegations of Abuse of Authority and Neglect of Duty. On October 7, 2013, Superintendent Hobbs proposed a one-day suspension for each of the allegations.

Decision

19. Upon review of the circumstances of this matter, there is no question that there have been significant delays. A delay of eleven months to conduct a one-day Discipline Proceeding and a further three months to issue a decision on discipline was entirely unnecessary and unacceptable. I am troubled by the lack of accountability and fairness observed in the discipline process in this matter. In my view, a competent and thorough investigation was carried out by the New Westminster Police Service for both the criminal proceedings and the *Police Act*. A finding was made by two separate Discipline Authorities substantiating the allegations of Abuse of Authority and Neglect of Duty for Constable Robinson. The discipline proposed by the Vancouver Police Department at both the Prehearing Conference and the Discipline Proceeding are inadequate to address the seriousness of this incident.
20. The process in which the discipline proceeding unfolded, including the delay, has served to undermine the public's confidence in the police discipline process. Decisions made by the Vancouver Police Department in this matter have failed not only Ms. Davidsen but also Constable Robinson and the public at large.
21. In addition to my review of this matter, on November 4, 2013, this Office received submissions from Mr. Scott Bernstein of the Pivot Legal Society, counsel for Ms. Davidsen, articulating reasons why a Public Hearing should be ordered in this matter.
22. Pursuant to section 138(1) of the *Police Act*, the Police Complaint Commissioner must arrange a Public Hearing or Review on the Record if there is a reasonable basis to believe that the Discipline Authority's findings at the conclusion of a discipline proceeding are incorrect or it is otherwise necessary in the public interest.
23. Having reviewed the investigation, and the Discipline Proceeding and determinations, pursuant to s.138(1)(c)(ii) of the *Police Act*, I have determined that a public hearing is required as I am of the view there is a reasonable basis to believe that the Discipline Authority has incorrectly applied s. 126 in proposing disciplinary or corrective measures.
24. Furthermore, pursuant to s. 138(1)(d), I have determined that a public hearing is necessary in the public interest. In arriving at this decision, I have considered several relevant factors; including but not limited to the following:
 - a) The complaint is serious in nature as the allegations involve a significant breach of public trust;
 - b) The conduct has violated, or would be likely to violate, a person's dignity, privacy or other rights recognized by law;

- c) It is necessary to examine or cross-examine witnesses and receive evidence that was not part of the record at the discipline proceeding, in order to ensure that procedural fairness and accountability is maintained;
- d) There is a reasonable prospect that a public hearing will assist in determining the truth;
- e) A public hearing is required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.

It is therefore alleged that Constable Robinson committed the following disciplinary default pursuant to section 77 of the *Police Act*:

- a) **Abuse of Authority:** contrary to section 77(3)(a)(ii)(A) of the *Police Act* – that on or about June 9, 2010, Constable Robinson committed the disciplinary default of Abuse of Authority by intentionally or recklessly using unnecessary force on Ms. Sandy Davidsen.
- b) **Neglect of Duty:** contrary to section 77(3)(m)(ii) of the *Police Act* – that on or about June 9, 2010, Constable Robinson committed the disciplinary default of neglect of duty by failing to assist Ms. Davidsen after she was pushed to the ground.

NOW THEREFORE:

25. A public hearing is arranged pursuant to section 138 of the *Police Act*.

26. Upon the recommendation of the Associate Chief Justice of the British Columbia Supreme Court, former BC Court of Appeal Justice Wally Oppal, Q.C., is appointed to preside as Adjudicator in these proceedings, pursuant to s. 142(2) of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 12th day of November, 2013.



Stan T. Lowe

Police Complaint Commissioner
for the Province of British Columbia