

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367
AND
IN THE MATTER OF CONSTABLE [REDACTED]
AND IN THE MATTER OF CONSTABLE [REDACTED]

NOTICE OF DISCIPLINE AUTHORITY'S DECISION

TO:	Constable [REDACTED]	Member
AND TO:	Constable [REDACTED]	Member
AND TO:	Mr. [REDACTED]	Complainant
AND TO:	Sergeant Colin McEwen	Investigator
AND TO:	Mr. Stan Lowe	Police Complaint Commissioner

Circumstances Giving Rise to the Complaint

On the 16th of February, 2009 at approximately 11:15 in the evening, the complainant, [REDACTED] was driving in the downtown area of Vancouver. He made a left turn from Dunsmuir Street onto Richards Street. He was stopped at a red light when he noticed a marked police car behind him. This made him uncomfortable so once he was through the intersection he pulled over to the side of the street hoping that the police car would pass by. Constable [REDACTED] and Constable [REDACTED], the occupants of the police car, had noticed Mr. [REDACTED]'s vehicle. It was a BMW equipped with fender flares and large wheels. The area in which they were driving had been subject to some gang violence in the preceding months and this was a type of car often favoured by those involved in these activities. Constable [REDACTED] also thought that Mr. [REDACTED] had made his turn onto Richards street very quickly and possibly from

the wrong lane. When Mr. [REDACTED] pulled over without being signalled to do so, the officers also thought this behaviour was unusual. They pulled in behind him intending to do a Motor Vehicle Act check. Mr. [REDACTED] did not wait to be approached. Instead he got out of his car and walked back toward the police cruiser. It was at this point that the officers activated their emergency lights. Mr. [REDACTED] was angry and was demanding to know why they were pulling him over. Constable [REDACTED] ordered Mr. [REDACTED] to return to his vehicle. He responded by saying that the officers could go fuck themselves. Then, he started back to his car as directed.

Mr. [REDACTED]'s hostility raised new concerns for Constable [REDACTED] and Constable [REDACTED]. They wondered if he might have a weapon of some sort in his vehicle. They decided it would be safer to deal with him outside his car and they report that they called out to tell him to come back. Mr. [REDACTED] says he did not hear this. The next thing he knew both officers had grabbed him from behind. He was shoved up against his vehicle and the officers began trying to get his hands into a position where they could handcuff him. Mr. [REDACTED] says they were trying to force his arms further than they would flex. Constable [REDACTED] took this to be resistance and delivered knee strikes to Mr. [REDACTED]'s legs. Finally Mr. [REDACTED] was placed in handcuffs.

Constable [REDACTED] went through Mr. [REDACTED]'s pockets removing his wallet, his cell phone and some receipts. He ordered Mr. [REDACTED] to sit on the concrete curb. Constable [REDACTED] then entered Mr. [REDACTED]'s vehicle which was still running. He turned it off and took the keys from the ignition. There was some discussion about whether Mr. [REDACTED] had been using drugs or alcohol. He had not. Then Constable [REDACTED] said he was going to search Mr. [REDACTED]'s vehicle. Mr. [REDACTED] objected. Constable [REDACTED] proceeded in the face of these objections. Nothing of interest was located.

During the course of his conversations with Mr. [REDACTED], Constable [REDACTED] thought he detected a faint odour of liquor on his breath. He asked Mr. [REDACTED] to blow into his face. This confirmed his initial impression. Based on this, Constable [REDACTED] administered an approved screening device demand. Mr. [REDACTED] provided two breath samples; both resulted in zero readings. Mr. [REDACTED] remained handcuffed throughout

this process. Finally he was given a ticket for stopping more than 30 cms from the curb. The handcuffs were then removed and he was allowed to continue on his way. Mr. [REDACTED] says the whole encounter took about 30 minutes

On February 20th, 2009 the Professional Standards Section of the Vancouver Police Department received a Police Act Form 1 Record of complaint from Mr. [REDACTED]. Mr. [REDACTED] alleged that the officers had:

- Arrested him unlawfully
- Used unreasonable force in making this arrest
- Conducted an unlawful search of his motor vehicle
- Issued a demand to provide breath samples into an approved screening device without lawful authority
- Issued a parking ticket without justification or authority.

On February 24th, 2009 Sergeant Colin McEwen received the file and was advised that he had been assigned as investigator. A Notice of Complaint was sent to the Office of the Police Complaint Commission on February 26, 2009.

The Investigator's Findings

The investigator examined five main issues.

1. Were Constable [REDACTED] and Constable [REDACTED] justified in stopping Mr. [REDACTED] to deal with him?
2. Was the force used by Constable [REDACTED] and Constable [REDACTED] justified?
3. Was Constable [REDACTED]'s search of Mr. [REDACTED]'s vehicle justified?
4. Was the demand to Mr. [REDACTED] to provide two samples of his breath into the ASD justified?
5. Was it reasonable for Constable [REDACTED] to issue a by-law ticket to Mr. [REDACTED]?

Sergeant McEwen's analysis of the evidence and the law as it pertained to these issues was extensive and thorough.

He concluded that:

1. Given all the circumstances the stop was reasonable and justified pursuant to section 73(1) of the Motor Vehicle Act.
2. In determining whether the officers used unreasonable force Sergeant McEwen relied on a report prepared for him by Sergeant [REDACTED]. Sergeant [REDACTED] is a recognized Use of Force expert in charge of the VPD's Force Options Response Training Unit. After providing a detailed explanation of the National Use of Force Model, Sergeant [REDACTED] analyzed the situation that officers [REDACTED] and [REDACTED] found themselves in with Mr. [REDACTED] and discussed tactical communication practises that could have been used prior to using soft and hard empty hand control. He concluded that the force used was not in accordance with current VPD training and was not appropriate given the situation.

While Sergeant McEwen appeared to accept and rely on this report he did not stop his analysis at this point but went on to ask if Constable [REDACTED] and Constable [REDACTED] were justified and authorized to detain or arrest Mr. [REDACTED] at all. He examined all of the relevant sections of the Criminal Code, the Controlled Drug and Substance Act, the Liquor Control Act and the Mental Health Act and concluded that they were not. At no point did the officers have reasonable and probable grounds to believe that an offence had been committed or that Mr. [REDACTED] suffered from a mental disorder that was likely to make him a danger to himself or others.

Sergeant McEwen went on to consider whether the officers' interaction with Mr. [REDACTED] could be characterized as an investigative detention. In examining that possibility he referred to the decision of the Supreme Court of Canada in R v Mann [2004] 3 S.C.R. 59. There the court held that police can detain

an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular offence. Sergeant McEwen concluded that there was simply not enough evidence to support the officers' belief the Mr. [REDACTED] was going to commence and assault on them or attempt to access a weapon in the vehicle. Absent that evidentiary base there were no grounds for an investigative detention.

Since Constable [REDACTED] and Constable [REDACTED] were not acting on reasonable grounds and were not engaged in an activity authorized or required by law when they arrested Mr. [REDACTED] Sergeant [REDACTED] found that their actions were not protected by section 25 of the Criminal Code. Additionally he found that since the officers did not have reasonable grounds to believe that Mr. [REDACTED] was about to commit an offence that would be likely to cause immediate or serious injury to them or anyone else they were not protected by section 27 of the Criminal Code when they used force to arrest him.

In summary, Sergeant McEwen found that the force used was not in compliance with VPD training and policies and was not justified.

3. Constable [REDACTED] searched Mr. [REDACTED]'s vehicle without his consent and without the authorization of a warrant. The officer indicated that he was searching for weapons as well as alcohol or drugs that might explain Mr. [REDACTED]'s confrontational manner. Sergeant McEwen examined the three statutes that might provide authority for such a search, namely: the Criminal Code, the Controlled Drug and Substance Act and the Liquor Control and Licensing Act. He concluded that a search for weapons was authorized under the Criminal Code only if the officer had reasonable grounds to believe that Mr. [REDACTED] possessed a weapon or that there was a weapon in his vehicle. Constable [REDACTED] had little more than an uneasy feeling. Similarly the CDSA and the LCLA authorize a search only if the officer has reasonable and probable grounds for believing that illegal drugs or alcohol will be found in the

vehicle. Again Constable [REDACTED] had no evidence to provide those grounds. Having concluded that there was no statutory authority for the search of Mr. [REDACTED]'s vehicle, Sergeant McEwen went on to look at the common law authority to search a location. He found that Constable [REDACTED] could not claim that he had Mr. [REDACTED]'s consent to the search nor that the search involved the seizure of something that was in plain view. Finally the common law right to a search incidental to arrest is dependent on there being a lawful arrest and since Sergeant McEwen had determined that Mr. [REDACTED]'s arrest was not lawful, the search too was unlawful.

4. Constable [REDACTED] and Constable [REDACTED] were both perplexed by the hostility Mr. [REDACTED] demonstrated toward them and entertained the belief that it might be an aggressiveness resulting from alcohol consumption. Once Mr. [REDACTED] was seated on the sidewalk and Constable [REDACTED] had a chance to speak to him, the officer thought he smelled a faint odour of liquor on Mr. [REDACTED]'s breath. He made a demand pursuant to section 254(2) of the Criminal Code requiring Mr. [REDACTED] to provide a breath sample into an ASD. The zero reading Mr. [REDACTED] obtained would indicate that Constable [REDACTED] was wrong when he thought he smelled liquor. Still Sergeant McEwen notes that there is a need to distinguish between the officer's subjective beliefs and the objective results of the ASD test. He notes that once the two tests were conducted Constable [REDACTED] seemed to accept that he was wrong and moved on to other matters. In view of this he thought it likely that Constable [REDACTED] was engaging in a legitimate and reasonable investigation and that there was no misconduct involved.

4. Constable [REDACTED] says that his boot is approximately 30 centimeters long and that he placed his foot between the tire on Mr. [REDACTED]'s car and the curb and found that the tire was about 3 inches beyond the end of his boot. Section 18.1 of the City of Vancouver Street and Traffic By-law 2849 provides that no person shall park or stop a vehicle on a roadway other than with the curbside wheels of the vehicle within 30cm of the curb or edge of the roadway. There

is an exception when a vehicle is yielding to an emergency vehicle but it is common ground that Mr. [REDACTED] pulled over prior to the police signalling him in any way. Accordingly, though Sergeant McEwen felt that given all that Mr. [REDACTED] had been through that evening, it would have been more appropriate not to issue the ticket he found that the elements of the offence were established and Constable [REDACTED] was justified in exercising his discretion as he did.

In summary, Sergeant McEwen found that:

1. Constable [REDACTED] and Constable [REDACTED] did without good cause detain and arrest Mr. [REDACTED] and use unnecessary force. He noted that Constable [REDACTED]'s conduct had been more egregious than Constable [REDACTED]'s but recommended that both be found culpable for one count of "Abuse of Authority."
2. Having found that Constable [REDACTED]'s search of Mr. [REDACTED]'s vehicle was not authorized by law Sergeant McEwen recommended that he be found culpable for one count of "Discreditable Conduct."
3. He found that the detention as it related to requiring Mr. [REDACTED] to provide breath samples into the ASD was justified and recommended that that allegation of "Abuse of Authority" be found to be unsubstantiated.
4. Finally, since the evidence supported the issuing of the by-law ticket, Sergeant McEwen recommended that the count of "Discreditable Conduct" pertaining to that ticket be found to be unsubstantiated.

Responses

On August 31, 2010 Sergeant McEwen submitted his final investigative report to Inspector [REDACTED], the Delegated Disciplinary Authority. On October 18th, 2010 pursuant to section 112 of the Police Act, Inspector John de Haas replacing [REDACTED] as the delegated Discipline Authority issued

his decision in this matter. He substantiated Allegation 1 against Constable [REDACTED] and Constable [REDACTED] but 'unsubstantiated' all other allegations.

The Police Complaint Commissioner, upon receiving notice of this decision determined pursuant to section 117(1) of the Police Act that there was a reasonable basis to believe that the Delegated Disciplinary Authority's decision in not substantiating Allegation 2 was incorrect.

Further, though Sergeant McEwen did not make a specific recommendation regarding the arrest of Mr. [REDACTED] by Constables [REDACTED] and [REDACTED], he did report to the Delegated Disciplinary Authority that the arrest was unlawful. Inspector [REDACTED] unsubstantiated that claim. Pursuant to Section 117(1) the Police Complaint Commissioner determined that there was a reasonable basis to believe that the delegated Disciplinary Authority's decision in not substantiating that unlawful arrest allegation was incorrect.

The writer was appointed as the new Disciplinary Authority in this matter and received the contents of the file on December 3rd, 2010.

Analysis and Findings

Allegation 1-Abuse of Authority

As it relates to Constable [REDACTED]

In order to prevent Mr. [REDACTED] from getting back into his car, Constable [REDACTED] and Constable [REDACTED] approached him from behind, grabbing his arms and attempting to raise them behind Mr. [REDACTED]'s back so that they could apply handcuffs. Constable [REDACTED] also slammed Mr. [REDACTED] up against the side of his car with enough force to cause a dent where Mr. [REDACTED]'s belt buckle made contact with the body of his vehicle. Mr. [REDACTED] had been involved in a motor cycle accident at some time in the past and could not raise his arms into the position the officers wanted. He was experiencing a significant amount of

pain. Feeling this resistance, Constable ██████ kned Mr. ██████'s legs several times. Further damage was caused to Mr. ██████'s car.

Sergeant McEwen asked Sergeant ██████, a recognized Use of Force expert in charge of the VPD's Force Options Response Training Unit to assess the use of force in this case. In discussing the response of the officers in this case, Sergeant ██████ says the main issue is the reason for the use of force in the first instance. There had been no overt action by Mr. ██████ that could reasonably be interpreted as pre-assaultive. Sergeant ██████ concluded that the officers should have used dialogue to defuse Mr. ██████'s negativity and explain their concerns; if they were concerned about Mr. ██████ accessing weapons in the vehicle they could have used distancing/shielding/ or and implied use of firearm by presentation; finally high level commands could have been employed. Sergeant ██████ concluded that the *member's* (emphasis mine) use of force in this incident was not in accordance with current VPD training and was not appropriate given the situation.

On a balance of probabilities then I find that Constable ██████ did use unnecessary force in detaining and arresting Mr. ██████. I find that Allegation 1 "Abuse of Authority" is substantiated and that this constitutes misconduct pursuant to section 77(3)(a)(ii)A of the Police Act

Allegation 1 as it relates to Constable ██████.

Anytime police make an arrest there is some use of force involved since typically they position the hands of the suspect and apply handcuffs. When Sergeant ██████ questions the need for force I understand him to be excluding these steps since they are usually deemed necessary even when a suspect is fully cooperative. Throughout this confrontation, Constable ██████'s involvement was limited to hanging onto Mr. ██████ right arm and trying to raise it to a position that would facilitate the application of handcuffs. Mr. ██████ describes her acting in a "gentle capacity" and says the discomfort he experienced in that arm was largely due to the stress put on it when

Constable [REDACTED] lifted him up or applied force. Though Mr. [REDACTED] disputes the arrest, he does not complain about the level of force used by Constable [REDACTED]. He said that at some point he got the impression that she realized he could not raise his arm further; she then eased off on the pressure that she was applying. On a balance of probabilities, I find that the allegation that Constable [REDACTED] did use unnecessary force in detaining and arresting Mr. [REDACTED] is unsubstantiated.

Allegation 5- Abuse of Authority

The second allegation against Constable [REDACTED] involves his search of Mr. [REDACTED]'s car. Since the searching of a car may sometimes occur incidental to arrest, and since the legality of the search will be determined by the validity of the arrest I propose to deal with Allegation 5 next.

It alleges that Constable [REDACTED] and Constable [REDACTED] acted in an oppressive manner toward Mr. [REDACTED] by intentionally or recklessly arresting Mr. [REDACTED] without good and sufficient cause.

The officers checked Mr. [REDACTED] on PRIME but did not find any warrants for his arrest.

Section 495 of the Criminal Code sets forth the circumstances in which an officer is entitled to arrest without a warrant. It provides that:

- (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;
 - (b) a person whom he finds committing a criminal offence; or
 - (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Both Constable [REDACTED] and Constable [REDACTED] expressed concern that Mr. [REDACTED] might have a weapon in his car. Since he had been verbally

confrontational they feared that he might be intending to assault them. They did not allege that he had committed an offence but rather that he might be about to do so. I agree with Sergeant McEwen that the officers' belief that Mr. ■ might be about to assault them with a weapon was based not on reasonable grounds but on suspicion and apprehension. Sergeant McEwen went on to examine other concerns expressed by the officers. Though they wondered if Mr. ■'s attitude might be the result of drug or alcohol use, there was no evidence to suggest that his ability to operate a motor vehicle was impaired or that he was in possession of either of these items.

The officers also questioned Mr. ■ about his mental health. Section 28 of the Mental Health Act provides that:

1. A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person
 - a. Is acting in a manner likely to endanger that person's own safety or the safety of others, and
 - b. Is apparently a person with a mental disorder.

Sergeant McEwen concludes that the information that the officers had at the time that they apprehended Mr. ■ was not sufficient to satisfy the requirements of the Mental Health Act. Nor did the officers indicate that this was the reason for the detention or that they had any intention of taking Mr. ■ to be examined by a physician.

Finally Sergeant McEwen considers the possibility that the apprehension of Mr. ■ might be justified as an investigative detention of the type outlined in the case of R v Mann. He concluded that there was simply not enough evidence to support the officers' belief the Mr. ■ was going to commence and assault on them or attempt to access a weapon in the vehicle. Absent that evidentiary base he found there were

no grounds for an investigative detention. I agree with both his analysis and his conclusion.

I find that Allegation 5- Abuse of Authority is substantiated as against both Constable [REDACTED] and Constable [REDACTED] and that they acted in a manner to wit: with oppressive conduct toward Mr. [REDACTED] including without limitation, in the performance or purported performance of duties, intentionally or recklessly making an arrest without good and sufficient cause. I find that this constitutes misconduct pursuant to section 77(3)(a)(i) of the Police Act.

Allegation two-Discreditable Conduct:

Constable [REDACTED] searched Mr. [REDACTED]'s vehicle on the night in question. It is alleged that he did this without good and sufficient cause and that this constitutes misconduct. There was no warrant to authorize the search of the vehicle and there is a presumption of unreasonableness where a search has taken place without a warrant which the party seeking to justify the warrantless search must rebut. *Hunter v Southam Inc.* [1984] 2 S.C.R. 145.

Constable [REDACTED] said that he searched the vehicle primarily for weapons but also for any alcohol or drugs including prescription drugs that might explain Mr. [REDACTED] behaviour. Sergeant Mc Ewen, in his report, again looked at the sections of the Criminal Code relating to search and seizure of weapons, the provisions of s11(7) of the Controlled Drug and Substance Act and s67 of the Liquor Control and Licensing Act. All of these sections require that the officer have reasonable and probable grounds to believe that an offence is being or has been committed and that the weapon, controlled substance or alcohol is likely to be found in or at the location being searched.

Constable [REDACTED] never asserted a belief of any sort, merely a suspicion. Accordingly Sergeant McEwen found, and I agree that there was no statutory authority for Constable [REDACTED]'s search of the vehicle.

Sergeant McEwen then turned his mind to common law authority which would allow an officer to conduct a search. He found that Constable [REDACTED] could not claim that it was a consent search since Mr. [REDACTED] had expressly forbidden it. Nor was there any object in plain view that might have justified a search and seizure. Finally he raised the issue of whether this was a search incidental to arrest. The legality of such a search is derived from the legality of the arrest. *Caslake v The Queen*, [1998] 1S.C.R. 51. In this case since the arrest was illegal, it could not provide the basis for a legal search.

I find then that the allegation that Constable [REDACTED] while in the performance or purported performance of his duties conducted himself in a manner that he knew or ought to have known, would bring discredit to the Vancouver Police Department by searching Mr. [REDACTED]'s vehicle without good and sufficient cause is substantiated and constitutes misconduct pursuant to 77(3)(h) of the Police Act.

Allegation 3-Abuse of Authority

After Constable [REDACTED] had searched Mr. [REDACTED]'s car, he had some discussion with Mr. [REDACTED] and thought he detected a faint smell of liquor on his breath. He asked Mr. [REDACTED] to blow in his face and Mr. [REDACTED] complied. Constable [REDACTED] still thought he could smell liquor so he asked Constable [REDACTED] to make a demand and have Mr. [REDACTED] provide a sample of his breath into an approved screening device. When Mr. [REDACTED] obtained a zero reading, Constable [REDACTED] asked Constable [REDACTED] to try again. Once more, Mr. [REDACTED] blew and the ASD registered zero. Constable [REDACTED] could not have smelled liquor on Mr. [REDACTED] breath though he claims he thought he did. Mr. [REDACTED] does not believe him and thinks that Constable [REDACTED] lied about this just so he would have an excuse to demand a breath sample.

Section 254(2) requires only that the officer "reasonably suspect" that the driver has alcohol in his body. If Constable [REDACTED] honestly believed that he had smelled a faint odour of liquor on Mr. [REDACTED]'s breath he had valid grounds for making a demand. As Sergeant McEwen says, it is Constable [REDACTED]'s subjective belief rather than the objective evidence of the ASD results that is in issue. In assessing the honesty of

Constable [REDACTED]'s belief that he smelled liquor it is reasonable to examine his possible motives for fabricating. Mr. [REDACTED], having been subject to the indignities of a forceful arrest and the search of both his person and his vehicle may well have seen the demand to provide a breath sample as one more way for the officer to exert unreasonable control and avoid releasing him. The writer is inclined to suspect that Constable [REDACTED]'s observations may have been influenced by a hope that there would be a positive reading which would explain the behaviour Mr. [REDACTED] had exhibited and also make the suspicions the officers had entertained more reasonable. Constable [REDACTED] appeared to have concerns about the way these events had unfolded. Because there had been a use of force, he offered Mr. [REDACTED] a chance to speak to his supervisor. (The delay that occasioned was probably equal to that caused by the administration of the breath test.) When he released Mr. [REDACTED] he gave him a card and invited him to call later to discuss these matters. From this I conclude that with hind sight he was aware that some of his actions might be open to question. If I am right about this, then the last thing that Constable [REDACTED] would have wanted to risk is making a breath demand that would provide conclusive proof that at least one of the reasons for his initial concerns was totally without foundation. At this point he had detained a Mr. [REDACTED] for close to half an hour and found no evidence that any offence had been committed. Surely he would have been mindful of the fact that demanding a breath sample that would prove negative for alcohol would give Mr. [REDACTED] further cause for complaint and leave open an allegation of police harassment.

The zero reading on the breath test enhanced Mr. [REDACTED]'s credibility. I doubt that it is evidence that Constable [REDACTED] would have intentionally provided. For these reasons I find that Allegation 3-Abuse of Authority is unsubstantiated.

Allegation 4-Discreditable Conduct

At the conclusion of this investigation Constable [REDACTED] issued a traffic violation ticket to Mr. [REDACTED] for parking too close to the curb. The allegation is that he did this without good and sufficient cause.

Section 18.1 of the City of Vancouver Street and Traffic By-law 2849 provides that no person shall park or stop a vehicle on a roadway other than with the curbside wheels of the vehicle within 30cm of the curb or edge of the roadway. There is an exception when a vehicle is yielding to an emergency vehicle.

When Mr. [REDACTED] stopped his car it was not his intention to leave it at that location for any extended period of time. In fact he left it running. Still the by-law definition of the word "stop" includes:

...standing or stopping of a vehicle whether occupied or not, except when necessary to avoid conflict with other traffic or to comply with directions of a Police Officer or a Traffic Control Signal or a Traffic Sign.

It is common ground between Mr. [REDACTED], Constable [REDACTED] and Constable [REDACTED] that Mr. [REDACTED] stopped his car and got out of it prior to the police giving him any direction to do so. Mr. [REDACTED] says he did not see Constable [REDACTED] measure the distance from his wheels to the curb but Constable [REDACTED] explains he did this by referencing the length of his boot which was approximately 30cm long. Had Mr. [REDACTED] seen him doing this it is unlikely that he would have realized the officer was taking a measure of the distance between the curb and the wheel. Accepting then that the distance was about three inches more than that prescribed by the by-law. Constable [REDACTED] was justified in issuing a violation ticket. He had some discretion about doing this and it may be as Sergeant McEwen suggests that in the circumstances of this case he should have overlooked the matter but it cannot be said that he acted without good and sufficient cause. I find that Allegation 4- Discreditable Conduct is not substantiated.

Notice of Next Steps

[1] As required by s. 117(8) of the *Police Act*, I hereby provide notice to Constable [REDACTED] and Constable [REDACTED]) as follows:

- (a) For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate the allegation that on February 16th, 2009, Constable [REDACTED] used unnecessary force on [REDACTED] which constitutes misconduct and requires the taking of disciplinary or corrective measures;
- (b) For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate the allegation that on February 16th, 2009 Constable [REDACTED] and Constable [REDACTED] arrested [REDACTED] without good or sufficient cause which constitutes misconduct and requires the taking of disciplinary or corrective measures;
- (c) For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate the allegation that on February 16th, 2009, Constable [REDACTED] searched the motor vehicle of [REDACTED] without good and sufficient cause which constitutes misconduct and requires the taking of disciplinary or corrective measures;
- (d) A prehearing conference will be offered to Constable [REDACTED] and Constable [REDACTED];

- (e) Constable [REDACTED] and Constable [REDACTED] have the right pursuant to s. 119 to request permission to call, examine or cross-examine witnesses at the discipline proceeding, provided such request is submitted in writing within 10 business days following receipt of this notice of decision.
- (f) The range of disciplinary or corrective measures being considered include:
- a. Requiring Constable [REDACTED] and Constable [REDACTED] to undertake or retake training in Tactical Communication;
 - b. Reprimanding Constable [REDACTED] in writing;
 - c. Reprimanding Constable [REDACTED] and Constable [REDACTED] verbally; and
 - d. Giving Constable [REDACTED] and Constable [REDACTED] advice as to their conduct.

I hereby notify [REDACTED], the complainant in this instance, of his right pursuant to s. 113(1) of the *Police Act* to make submissions at the discipline proceeding with respect to the complaint, the adequacy of the investigation, or the disciplinary or corrective measures that would be appropriate.

Dated at Surrey, British Columbia, this 13th day of December, 2010.

“Carole D. Lazar”

Hon. Carole D Lazar, Discipline Authority