

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367  
AND  
IN THE MATTER OF A REVIEW OF  
ALLEGATIONS OF ABUSE OF AUTHORITY AND DECEIT  
AGAINST  
OF THE  
AND  
FORMERLY OF

NOTICE OF DECISION

TO:

AND TO:

AND TO:

AND TO:

AND TO:

AND TO: Mr. Stan Lowe, Police Complaint Commissioner

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***Introduction***

[1] On August 26, 2013, the Police Complaint Commissioner ordered, pursuant to s. 117 of the *Police Act*, R.S.B.C. 1996 c.367, that I review the Disciplinary

Authority's determination that certain allegations of abuse of authority and deceit directed at \_\_\_\_\_ a member of the \_\_\_\_\_ and \_\_\_\_\_, a retired member of the same service who I will refer to as \_\_\_\_\_ could not be substantiated on the evidence. In the Commissioner's view, the Disciplinary Authority's determination in respect of the allegations was incorrect.

[2] Due to my absence from Vancouver, I was not able to take delivery of the material, comprised of some 2,286 pages and videos, required in connection with the review until September 26, 2013. The *Police Act* stipulates that my decision is due within 10 business days from the receipt of the material, namely on or before October 10, 2013.

[3] The allegations against the officer and former officer arise out of an incident at the \_\_\_\_\_ on \_\_\_\_\_ in the course of which \_\_\_\_\_ and \_\_\_\_\_ struck \_\_\_\_\_ with open fists and police batons in the course of making an arrest.

[4] \_\_\_\_\_ was taken to the hospital where he received stitches for a laceration on his scalp. Abrasions to his head, hands, legs and back were also evident. He was arrested and transported to \_\_\_\_\_ cells on a charge of obstruction of a police officer in the execution of his duties. Nothing in the evidence would suggest that any other charges were contemplated at the time.

[5] The violation ticket that \_\_\_\_\_ was writing at the outset of the incident stating that \_\_\_\_\_ appears to have been cancelled. Almost 24 hours after the incident, \_\_\_\_\_ issued a violation ticket to \_\_\_\_\_ and for being \_\_\_\_\_

While \_\_\_\_\_ was initially arrested and booked on a charge of obstructing a police officer, he was later also charged with causing a disturbance contrary to s. 175(1)(a)(ii) of the *Criminal Code*, and assaulting a police officer contrary to s. 270(1)(b) of the *Criminal Code*.

[6] reported the incident to the Commissioner who ordered that service to undertake an investigation. Because of a flawed process, on November 23, 2012, the Commissioner ordered a second investigation by the in respect of eight allegations, namely:

Count 1: Abuse of Authority

It is alleged that on or about , and  
at or near the committed the disciplinary  
default of Abuse of Authority contrary to section 77(3)(a)(ii) of the Police Act when  
they intentionally or recklessly arrested for Obstructing a Peace  
Officer without good and sufficient cause.

Count 2: Abuse of Authority

It is alleged that on or about , and  
at or near the committed the disciplinary  
default of Abuse of Authority contrary to section 77(3)(a)(ii)(A) of the Police Act when  
they intentionally or recklessly used unnecessary force against

Count 3: Abuse of Authority

It is alleged that on or about and  
at or near the committed the disciplinary  
default of Abuse of Authority contrary to section 77(3)(a)(i) of the Police Act when  
they intentionally or recklessly issued a violation ticket to for  
Drunkenness in a Public Place contrary to section 41 of the Liquor Control and  
Licensing Act without good and sufficient cause.

Count 4: Abuse of Authority

It is alleged that on or about and  
at or near the committed the disciplinary  
default of Abuse of Authority contrary to section 77(3)(a)(i) of the Police Act when  
they intentionally or recklessly arrested and recommended charges against  
for Causing a Disturbance contrary to section 175(1)(a)(ii) of the Criminal  
Code without good and sufficient cause.

Count 5: Abuse of Authority

It is alleged that on or about and  
at or near the committed the disciplinary  
default of Abuse of Authority contrary to section 77(3)(a)(i) of the Police Act when  
they intentionally or recklessly arrested and recommended charges against  
for Assaulting a Police Officer contrary to section 270(1)(b) of the Criminal  
Code without good and sufficient cause.

Count 6: Deceit

It is alleged that on or about \_\_\_\_\_ and  
at or near the \_\_\_\_\_ committed the disciplinary  
default of Deceit contrary to section 77(3)(f)(i)(A) or (B) of the Police Act when they  
issued a violation ticket to \_\_\_\_\_ for Drunkenness in a Public Place  
contrary to section 41 of the Liquor Control and Licensing Act that to their knowledge  
was false or misleading.

Count 7: Deceit

It is alleged that on or about \_\_\_\_\_ and  
at or near the \_\_\_\_\_ committed the disciplinary  
default of Deceit contrary to section 77(3)(f)(i)(A) or (B) of the Police Act when they  
arrested and recommended charges against \_\_\_\_\_ for Causing a  
Disturbance contrary to section 175(1)(a)(ii) of the Criminal Code that to their  
knowledge was false or misleading.

Count 8: Deceit

It is alleged that on or about \_\_\_\_\_ and  
at or near the \_\_\_\_\_ committed the disciplinary  
Default of Deceit contrary to section 77(3)(f)(i)(A) or (B) of the Police Act when they  
arrested and recommended charges against \_\_\_\_\_ for Assaulting a  
Police Officer contrary to section 270(1)(b) of the Criminal Code that to their  
knowledge was false or misleading.

[7] \_\_\_\_\_ of the \_\_\_\_\_ conducted the investigation and submitted his  
Final Investigation Report to the Chief Constable of the \_\_\_\_\_ who had been  
designated the Disciplinary Authority. After reviewing the \_\_\_\_\_ and  
reports on their investigations, the Disciplinary Authority concluded that the evidence  
appeared to substantiate the allegations in Counts 1, 2, and 3, namely abuse of  
authority by intentionally or recklessly arresting \_\_\_\_\_ for obstructing a  
peace officer, abuse of authority by intentionally or recklessly using unnecessary  
force against \_\_\_\_\_, and abuse of authority by issuing a violation ticket to  
\_\_\_\_\_ for drunkenness in a public place. The Disciplinary Authority  
concluded that the evidence appeared to substantiate Count 4 alleging abuse of  
authority by intentionally or recklessly arresting and recommending charges against  
\_\_\_\_\_ for causing a disturbance as against \_\_\_\_\_ but not as  
against \_\_\_\_\_. The Disciplinary Authority concluded that the evidence did not  
appear to support Count 5 alleging abuse of authority by intentionally or recklessly

arresting and recommending charges against \_\_\_\_\_ for assaulting a police officer as against either officer. Finally, the Disciplinary Authority concluded that the evidence did not appear to substantiate Counts 6 through 8 alleging deceit on the part of either officer.

[8] The Commissioner does not take exception to the Disciplinary Authority's determination in relation to Counts 1 through 3 as against either officer, or the finding in relation to Count 4 as against \_\_\_\_\_. Consequently, the Disciplinary Authority will be responsible for the conduct of a disciplinary proceeding in relation to those defaults.

[9] The Commissioner says that the determination in relation to Count 4 as it pertains to \_\_\_\_\_ and the determinations in relation to Counts 5 through 8 as they pertain to both \_\_\_\_\_ and \_\_\_\_\_ are not correct. It follows that this review is concerned only with the question of whether the evidence appears to substantiate the allegation that \_\_\_\_\_ abused his authority by arresting and recommending that charges be laid against \_\_\_\_\_ for causing a disturbance; the allegation that \_\_\_\_\_ and \_\_\_\_\_ abused their authority by arresting and recommending charges against \_\_\_\_\_ for assaulting a police officer; and the allegations of deceit against either or both officers.

[10] Any determination on this review that there is no misconduct is final and binding. Any determination that the evidence appears to substantiate a finding of misconduct on any of Count 4 against \_\_\_\_\_ and Counts 5 through 8 as against either or both officers will result in me becoming the disciplinary authority in relation to that complaint or those complaints and the person responsible for the conduct of a disciplinary proceeding.

### ***The Video Evidence***

[11] Two closed-circuit cameras at the \_\_\_\_\_ captured the incident that gives rise to these proceedings. The first camera depicts the stairwell leading to the exit. The second depicts the exit level

[12] The first camera shows that at approximately [redacted] was descending the stairs leading from the [redacted] to the street level at the [redacted]. He was in a [redacted]. There is nothing to indicate that he was acting or moving abnormally at the time. There are no observable signs of intoxication in his gait, balance, or demeanour.

[13] [redacted] approached [redacted] from behind, stopped him mid-way on the descent, and restrained him by grasping his backpack. [redacted] soon joined the others on the stairs. They descended to the lower level where a discussion ensued. There is no audio recording but the scene appears calm. The officers stood on either side of [redacted] who had his back to the wall. [redacted] held what appears to have been his [redacted] in his hand. [redacted] gestured with his arms in the course of speaking but there is no indication that his movements alarmed or concerned either officer. Nothing in their movements suggests otherwise. After a lapse of approximately five minutes, [redacted] placed his book in his pant pocket, and he and [redacted] proceeded to take hold of [redacted] and pin him against the wall. [redacted] struggled whereupon the officers turned him around so that his back faced the exit. [redacted] broke free of the officers' grip and backed up in a stumbling gait that appears to have resulted from being pushed by either or both of [redacted] and [redacted] as he turned or was turned. The trio disappeared from the view of that camera.

[14] The second camera shows the trio in the exit area of the station. [redacted] is first seen with his arms around [redacted] waist as they lurch forward. [redacted] takes [redacted] to the ground and applies at least eight fist blows to [redacted] head and upper body. [redacted] joins the fray having first withdrawn his baton. [redacted] applies at least seven blows of his baton to [redacted] head and upper body. [redacted] struck [redacted] at least four times on the back of his leg or legs and his upper body. [redacted] broke free no longer wearing his backpack or shirt and headed out the door with the officers in pursuit. Out of sight of the camera, he was apprehended and handcuffed outside the station

exit. The duration of the incident within the confines of the station was approximately six minutes.

**Framework for Analysis**

[15] Section 77 of the *Police Act* provides as follows in relation to abuse of authority and deceit:

77 (1) In this Part, "misconduct" means

(a) conduct that constitutes a public trust offence described in subsection (2), or

(b) conduct that constitutes

(i) an offence under section 86 [offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint] or 106 [offence to hinder, delay, obstruct or interfere with investigating officer], or

(ii) a disciplinary breach of public trust described in subsection (3) of this section.

(2) A public trust offence is an offence under an enactment of Canada, or of any province or territory in Canada, a conviction in respect of which does or would likely

(a) render a member unfit to perform her or his duties as a member, or

(b) discredit the reputation of the municipal police department with which the member is employed.

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

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

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

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or

(B) detaining or searching any person without good and sufficient cause, or

(iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that



tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;

(f) "deceit", which is any of the following:

- (i) in the capacity of a member, making or procuring the making of
  - (A) any oral or written statement, or
  - (B) any entry in an official document or record,that, to the member's knowledge, is false or misleading;
- (ii) doing any of the following with an intent to deceive any person:
  - (A) destroying, mutilating or concealing all or any part of an official record;
  - (B) altering or erasing, or adding to, any entry in an official record;
- (iii) attempting to do any of the things described in subparagraph (i) or (ii);

[16] The relevant sections of the *Liquor Control and Licensing Act* and the *Criminal Code* are those pertaining to intoxication, resisting arrest, causing a disturbance, and assault:

*Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267

- 41(1) A person who is intoxicated must not be or remain in a public place
- (2) A peace officer may arrest, without a warrant, a person found intoxicated in a public place.

*Criminal Code*, R.S.C. 1985, c. C-46

129. Every one who

- (a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

is guilty of

- (d) an indictable offence and is liable to imprisonment for a term not exceeding two years, or



(e) an offence punishable on summary conviction.

175. (1) Every one who

(a) not being in a dwelling-house, causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,

(ii) by being drunk, or

(iii) by impeding or molesting other persons,

is guilty of an offence punishable on summary conviction.

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; or

### ***Review of the Final Investigation Report and Analysis***

#### ***(a) Count 4: Arrest for Causing a Disturbance***

[17] As previously noted, \_\_\_\_\_ concluded that the evidence appeared to support the allegation of abuse of authority by arresting \_\_\_\_\_ on a charge of causing a disturbance as against \_\_\_\_\_ but not as against \_\_\_\_\_. He concluded that there was no objective evidence that \_\_\_\_\_ behaviour was a concern or that he did anything to disturb anyone prior to the police interaction with him and that neither officer thought otherwise. He determined that \_\_\_\_\_ had made the arrest because \_\_\_\_\_ caused a disturbance by being drunk.

[18] \_\_\_\_\_ concluded that \_\_\_\_\_ believed \_\_\_\_\_ was under the influence of alcohol as a result of \_\_\_\_\_ telling nurses he had consumed beer and marijuana. Apparently \_\_\_\_\_ observed nothing on his own that would suggest drunkenness. However, in one or more reports \_\_\_\_\_ mentioned alcohol but not drug consumption.

[19] At the same time, \_\_\_\_\_ concluded that \_\_\_\_\_ thought \_\_\_\_\_ had caused a disturbance by fighting with police although at a point in the investigation process \_\_\_\_\_ also said that "in my belief, he would have been attached to the, uh, being intox in public, causing a disturbance by being drunk". [sic] There is evidence that \_\_\_\_\_ and \_\_\_\_\_ discussed the charges that they would press against \_\_\_\_\_ as they were doing the paperwork associated with the incident. It appears they both thought that the consumption of alcohol was a factor in the decision to arrest, but \_\_\_\_\_ placed more weight on the fighting with police than he did on any state of inebriation he attributed to

[20] Apart from the fact that \_\_\_\_\_ belief differed from that of \_\_\_\_\_ about how \_\_\_\_\_ caused a disturbance, I can find nothing that would explain the conclusion that \_\_\_\_\_ appeared to have abused his authority by participating in the arrest for causing a disturbance while \_\_\_\_\_ had not.

[21] I agree with the assessment that the objective evidence does not appear to support any arrest for causing a disturbance. Moreover, at the point in time that \_\_\_\_\_ commenced the initial arrest of \_\_\_\_\_ the only concern either officer had was that \_\_\_\_\_ had lied about his name and date of birth and had therefore obstructed a police officer in the execution of his duties. Drunkenness, assault, or causing a disturbance, were simply not part of the equation.

[22] The question then is whether \_\_\_\_\_ could or should be excused from the eventual arrest of \_\_\_\_\_ for causing a disturbance because the arrest was made by \_\_\_\_\_ or on the basis that his belief that \_\_\_\_\_ caused a disturbance by fighting with police in the course of being arrested for obstructing a police officer provided \_\_\_\_\_ with good and sufficient cause to make an arrest, whereas \_\_\_\_\_ belief that \_\_\_\_\_ caused a disturbance by being drunk in a public place did not.

[23] In my opinion, it matters not whether \_\_\_\_\_ and \_\_\_\_\_ had the same or different views about what constituted causing a disturbance. Each agreed that \_\_\_\_\_ should be arrested and charged with causing a disturbance in the course of this incident. The fact that the officers differed in their views of the particulars that amounted to causing a disturbance is of no consequence. Particulars are not immutable. The arrest on the charge arose in relation to a single incident in the course of which both officers believed \_\_\_\_\_ had caused a disturbance. The question is whether anything that \_\_\_\_\_ did in the course of the incident could amount to causing a disturbance. I can find no evidence to suggest that \_\_\_\_\_ objected to \_\_\_\_\_ arrest. The evidence would not appear to support any suggestion that he did.

[24] Also of interest and concern in this case is \_\_\_\_\_ assertion that he was not trying to "load on" charges against \_\_\_\_\_ and he believed this offence had occurred. That statement appears to be at odds with the view of more senior officers who were involved in a discussion of the charges. The following is a portion of a transcript of a telephone exchange that took place between

\_\_\_\_\_, and \_\_\_\_\_ on

: Well, yeah, if he has to stay there for monitoring then it might [sic] possible to leave him there right, so.

: Yeah.

: Okay, I'll give the echo guys rolling.

: Generally, generally sp... generally speaking though; you fight with the police and get injured and everything else.

: Yep

: So, so what did they do an obstruct and a resist arrest?

: Obstruct, a resist arrest, is there going to be assault.

: Assault PO

: Assault PO, and they probably going to throw causing a disturbance by the way

: Yeah, yeah he should go to jail.

: Yep. Okay.

: Sounds good.

: Thanks.

[sic]

[25] The content of this conversation raises a concern that an attitude supporting retaliation and overloading by throwing in charges that have no basis in fact may be part of the culture.

[26] In sum, the evidence would appear to support a finding that acted with , both intentionally or recklessly arrested for causing a disturbance without good and sufficient cause, and conclusion and the Disciplinary Authority's determination to the contrary is not correct. There appears to be too great a disparity between the objective evidence and belief to attribute good and sufficient cause to the arrest.

[27] In my opinion, it appears that the evidence could substantiate the allegation of abuse of authority in Count 4 as against

***(b) Arrest for Assaulting a Police Officer***

[28] The Disciplinary Authority concluded that the evidence did not appear to support Count 5 against either officer in relation to the abuse of authority by intentionally or recklessly arresting on a charge of assaulting a police officer without good and sufficient cause.

[29] Neither nor alleges that struck either of them. All either offers by way of support for the arrest was for assault is the fact that at one or more points in time, clenched his fists and tensed his body in a boxer-like stance as they applied or prepared to apply force to him. The officers viewed these actions as "pre-assaultive cues". They say they were first observed at the point when put away his notebook and he and

initiated their proposed arrest of \_\_\_\_\_ for obstructing a peace officer.

Once the query [of CPIC] came back with negative results I began putting my ticket book and pen away to prepare to arrest \_\_\_\_\_ as I believed he intentionally lied about his identity. As I did this \_\_\_\_\_ then displayed the following pre-assaultive cues; ceased moving around, began ignoring the officers, and clasping his hands together. At approximately \_\_\_\_\_ hours I informed \_\_\_\_\_ that he was under arrest for Obstruction and to put his hands behind his back. \_\_\_\_\_ then looked directly at me planted his feet and put his hands up as if to prepare for a physical altercation.

[30] There is nothing in this account to suggest that an arrest for attempted assaulted was warranted. The officer's purpose was to arrest for obstruction. The suggestion that \_\_\_\_\_ acted as reported does not appear to be supported by the video evidence. Moreover, it is difficult to comprehend how "pre-assaultive cues" can amount to a threatened or actual assault. They are just what the police call them: indicia that the person of interest to them might be getting ready to assault by threat or deed. They do not in and of themselves mean that an assault by threat or otherwise has occurred. Their observation may be used to justify the use of force but not an arrest for assault.

[31] Both officers say \_\_\_\_\_ acted in like manner by clenching his fist and taking a boxer's stance when he broke free from \_\_\_\_\_ and \_\_\_\_\_ grip at the exit and started to run away. Those statements are inconsistent with the video evidence.

[32] In short, objective evidence in the form of the video recording of the interaction between the officers and \_\_\_\_\_ at the bottom of the stairs and at the exit appears to contradict the statements made by \_\_\_\_\_ in relation to the incident and his purported observation of any pre-assault cues at the time the officers moved to arrest \_\_\_\_\_. The objective evidence also contradicts the suggestion made by \_\_\_\_\_ that \_\_\_\_\_ clenched his fists in a pre-assault stance when the officers tried to arrest him and struck him repeatedly with an open fist and batons. It would appear that the officers were engaged in an assault of \_\_\_\_\_ rather than \_\_\_\_\_ being engaged in an assault or attempted

assault of them, and any movement of the kind either officer says he observed would appear to support the conclusion that [redacted] was acting to defend himself against the aggression displayed by the officers.

[33] In my opinion, it may have been appropriate to arrest [redacted] on a charge of resisting arrest as he struggled to free himself from the grasp of the officers who applied force to him. I emphasize the use of the word "may" for the reason that the Disciplinary Authority has determined that it appears the evidence supports the view that the initial arrest for obstruction was unlawful and an abuse of authority. That being the case, it is likely that [redacted] was justified in defending himself against an unlawful arrest.

[34] In my opinion, all of the evidence, assessed on the balance of probabilities, appears to substantiate Count 5 alleging that both officers abused their authority by intentionally or recklessly arresting and recommending a charge of assault of a police officer against [redacted] without good and sufficient cause.

***(c) Allegations of Deceit: Counts 6, 7, and 8***

[35] The allegations of deceit are problematic in this case. The problem stems from the fact that the same set of circumstances is the foundation for Count 3 and Count 6 pertaining to the issue of a violation ticket for drunkenness in a public place; for Counts 4 and 7 pertaining to causing a disturbance; and for Counts 5 and 8 pertaining to assault. A finding of default on both counts in any of the related pairs would offend the rule against multiple convictions, a rule having its origins in the common law. An accused cannot be convicted or punished more than once for the same offence.

[36] In *R. v. Keinapple*, [1975] 1 S.C.R. 729, the Supreme Court of Canada held that multiple convictions could not be entered for the same wrongdoing although the wrongdoing was described by different offences. The offences represent alternative charges and one offence embraces the other. While the ruling was made in the context of *Criminal Code* offences, I am of the view that because of its common law



origins, the principle should apply in discipline cases under the *Police Act* where, as here, the allegation is that arrests that were made respect of three offences engaged defaults by way of abuse of authority and deceit.

[37] In the result, a determination by the Disciplinary Authority at the conclusion of a disciplinary proceeding that the abuse of authority alleged in Counts 3 and 4 against \_\_\_\_\_ and in Count 3 against \_\_\_\_\_ did occur would mean that no disciplinary default in the nature of deceit could be found to have been committed by either of them in relation to the same circumstances as alleged in Counts 6 and 7. Those two counts would have to be stayed as against \_\_\_\_\_

Should the disciplinary proceeding before me in respect of Count 4 as it pertains to \_\_\_\_\_ and Count 5 as it pertains to both officers, result in a determination of default, Count 7 would have to be stayed as against \_\_\_\_\_ and Count 8 would have to be stayed as against both officers.

[38] The point is only relevant in the event that I conclude that the evidence appears to substantiate the allegations of deceit in Counts 6 through 8, and in the event that the abuse of authority allegations are first sustained against one or both of the officers. In that regard, as a result of my review of the Final Investigation Report and the material referred to therein, I have concluded that the evidence does appear to substantiate the allegation that each of the officers committed the disciplinary default of deceit by making false or misleading statements in support of the issue of a violation ticket for drunkenness, and when arresting \_\_\_\_\_ and recommending charges against him for causing a disturbance and assault.

[39] \_\_\_\_\_ concluded that there appeared to be no objective evidence to support the allegation of intoxication or that \_\_\_\_\_ had caused a disturbance. Nonetheless, he concluded that neither \_\_\_\_\_ nor \_\_\_\_\_ had committed the default of deceit in relation to either offence because neither understood the elements of the offence of intoxication or causing a disturbance. In my opinion, the conclusion does not appear to be supported by the evidence.



[40]                    had been employed by                    for                    years and  
                  for                    years, at the time of the confrontation with                    Both had  
completed the training required of incoming officers employed by                    Both  
appear to have devoted their career with                    as patrol officers at                    or  
other                    in the                    It is difficult to comprehend how  
any individual employed in such a capacity could or would not be familiar with the  
meaning of the word "intoxication" or the meaning of "causing a disturbance".

[41]    At their core the concepts are not complex to a layman let alone a responsible  
police officer. The legislation particularizing the defaults of intoxication and causing  
a disturbance is uncomplicated and straightforward. In the circumstances of this  
case, given the task that the officers had been employed to undertake, the basic  
training they had been required to undergo, and their length of service, the assertion  
that neither of them understood the elements of intoxication in public and causing a  
disturbance would appear to be unreasonable by any standard one applies. As a  
result the statement by either that they believed an offence had been committed  
would not appear to be capable of belief whether in relation to the allegation that  
                  was intoxicated or that he had caused a disturbance.

[42]    The reasons I have provided on the question of abuse of authority by  
arresting                    on a charge of assault apply equally to the question of deceit  
alleged in Count 8.

[43]    The video evidence would appear to support the conclusion that there was no  
action on the part of                    from the beginning to the end of the police  
encounter that might be regarded as an assault by him of either officer or an attempt  
to assault either of the officers. As I have stated, the objective evidence appears to  
point in another direction, namely                    and                    assaulted  
                  and any assertion by either officer that they believed that  
assaulted or attempted to assault one or other of them appears to be unreasonable  
and not capable of belief.

[44] In my opinion all of the evidence appears to substantiate the allegations that each of \_\_\_\_\_ and \_\_\_\_\_ intentionally made false or misleading statements in order to effect an arrest for intoxication, causing a disturbance, and assault, and to make recommendations for the prosecution of \_\_\_\_\_ on such charges. The question of whether the actions of the officers and \_\_\_\_\_ will result in findings that either or both of them actually made false or misleading statements must fall to be determined in a disciplinary proceeding directed at the point, should one occur.

***Notice of Next Steps***

[45] As required by s. 117(8) of the *Police Act*, I hereby provide notice to \_\_\_\_\_ as follows:

- (a) For the reasons set forth herein, the evidence appears sufficient to establish the allegation in Counts 4 through 8 inclusive against \_\_\_\_\_
- (b) A prehearing conference will be offered to \_\_\_\_\_ in relation to Count 4 and 5.
- (c) \_\_\_\_\_ has 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.
- (d) The range of disciplinary or corrective measures being considered in relation to each of Counts 4 and 5 include:
  - a. Reduction in rank;
  - b. Suspension without pay for not more than 30 days; and
  - c. Transfer or reassignment within \_\_\_\_\_
- (e) A pre-hearing conference will be offered to \_\_\_\_\_ in relation to Counts 6 through 8, but I propose that the conduct of the conference or any disciplinary hearing in relation to those counts shall be deferred until the disciplinary process in relation to Counts 1 through 5 has been completed by Disciplinary Authority on Counts 1 through 3, and by me on Counts 4 and 5.
- (f) The range of disciplinary or corrective measures being considered in respect of each of Counts 6, 7, and 8 include:
  - a. Dismissal;
  - b. Reduction in rank; and
  - c. Suspension without pay for not more than 30 days.

[46] As required by s. 117(8), I hereby give notice to \_\_\_\_\_ as follows:

(a) For the reasons set forth herein, the evidence referenced in the investigation reports appears sufficient to substantiate the allegation in Counts 5 through 8 inclusive against \_\_\_\_\_

(b) A prehearing conference will be offered to \_\_\_\_\_ in relation to Count 5.

(d) \_\_\_\_\_ has 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.

(e) A pre-hearing conference will be offered to \_\_\_\_\_ in relation to Counts 6 through 8, but I propose that the conduct of the conference or any disciplinary hearing in relation to those counts be deferred until the disciplinary process has been completed by the Disciplinary Authority on Counts 1 through 4, and by me on Count 5.

(f) The range of disciplinary or corrective measures being considered in respect of Count 5 include:

- a. Reduction in rank;
- b. Suspension without pay for not more than 30 days;
- c. Transfer or reassignment within \_\_\_\_\_; and

(g) The range of disciplinary or corrective measures being considered in respect of each of Counts 6, 7, and 8 include:

- a. Dismissal;
- b. Reduction in rank; and
- c. Suspensions without pay for not more than 30 days.

[47] I direct \_\_\_\_\_ attention to s. 127 of the *Police Act*:

127 (1) After finding that the conduct of a former member is misconduct and hearing submissions, if any, from the former member or her or his agent or legal counsel, the discipline authority must apply the provisions of section 126 (2) and (3) [*imposition of disciplinary or corrective measures*] in respect of the matter as if the former member had continued to be a member, then determine what disciplinary or corrective measures the discipline authority would have taken under section 126 (1) if the former member had continued to be a member.

(2) The disciplinary or corrective measures determined in accordance with subsection (1) of this section are the disciplinary or corrective measures to be

proposed by the discipline authority for the purposes of section 128 (1) (a) [disciplinary disposition record].

[48] As required by s. 117(8) of the *Police Act*, I hereby give notice to Mr. \_\_\_\_\_ of his right, pursuant to s. 113 of the *Police Act*, to make submissions at any discipline proceeding.

[49] Finally, I request the Commissioner to grant an extension pursuant to s. 118 of the *Police Act* in order to ensure that all disciplinary proceedings in relation to the allegations of deceit in Counts 6 through 8 are deferred until completion of the disciplinary hearings in relation to Counts 1 through 5 as against both officers.

Dated at Vancouver, British Columbia this 9th day of October 2013.



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Hon. Ian H. Pitfield