

OPCC FILE NO. 16-11867  
D.A. NO. [REDACTED]

IN THE MATTER OF THE POLICE ACT, R.S.B.C. CHAPTER 367  
AND  
IN THE MATTER OF A DISCIPLINE PROCEEDING UNDER SECTION 124  
AND  
IN THE MATTER OF ALLEGATIONS OF MISCONDUCT AGAINST  
[REDACTED]  
OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE DISPOSITION RECORD  
UNDER SECTION 128(1)  
(Form 4)

Name of member/former member involved: [REDACTED]

Police department, designated policing unit or designated law enforcement unit:  
**Vancouver Police Department**

Date of discipline proceeding: **2017/11/23**

In relation to each allegation of misconduct found to be proven, the following disciplinary or corrective measures are proposed:

Misconduct:

**Disciplinary breach of trust by abuse of authority through oppressive conduct, by intentionally or recklessly using unnecessary force in conducting an arrest of the complainant, [REDACTED], on [REDACTED]; specifically, by one or more of the following: forcibly arresting the complainant, placing the complainant on the ground, applying knee strikes, and/or using an arm bar while removing or attempting to remove the**

**complainant's helmet by force, contrary to Section 77(3)(a)(ii)(A) of the Police Act.**

Aggravating/mitigating factors: **See Reasons below**

Disciplinary/corrective measures: **Written reprimand; training in use of force with an emphasis on situation assessment and reassessment, and de-escalation techniques; anger management counseling with an emphasis on regulation of emotions.**

Misconduct:

**Disciplinary breach of trust by intentionally or recklessly damaging property, specifically a motorcycle helmet and one or more cell phones, belonging to the complainant, [REDACTED], a member of the public, contrary to Section 77(3)(e) of the Police Act.**

Aggravating/mitigating factors: **See Reasons below**

Disciplinary/corrective measures: **Written reprimand; training in use of force with an emphasis on situation assessment and reassessment, and de-escalation techniques; anger management counseling with an emphasis on regulation of emotions.**

**TAKE NOTICE:**

If you are aggrieved by the disposition of your case, you may file with the police complaint commissioner a written request for a public hearing or review on the record. The police complaint commissioner must receive the request within 20 business days after you receive the discipline authority's report of the discipline proceeding under section 133 (1) (a) of the *Police Act*. Unless a public hearing or review on the record is arranged by the police complaint commissioner, the findings and reasons set out in Form 3 and the determination as to appropriate disciplinary or corrective measures set out in this Form 4 in respect of the matter are final and conclusive and not open to question or review by a court on any ground.

**Dated this 26<sup>th</sup> day of January, 2018**



**Carol Baird Ellan, Discipline Authority**

**FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE POLICE  
COMPLAINT COMMISSIONER AS FOLLOWS:**

████████████████████  
████████████████████  
Office of the Police Complaint Commissioner  
5<sup>th</sup> Floor, 947 Fort Street,  
PO Box 9895, Stn Prov Govt  
Victoria BC V8W 9T8  
Ph. 250-356-7458

**REASONS:**

**Overview**

[1] Following a discipline proceeding I found two allegations of misconduct against ██████████ (the "member") to be established. The allegations concern the use of unnecessary force and causing damage to property in the conduct of an arrest of ██████████ (the "complainant") on ██████████. These are my reasons under Section 128(1)(a) and (c) in relation to proposed disciplinary or corrective measures and aggravated and mitigating circumstances.

**History of Proceedings**

[2] The Police Complaint Commissioner ("PCC") initiated an investigation on June 13, 2016 pertaining to a single allegation of unnecessary force. The additional allegation of damage to property was added on January 4, 2017. The Final Investigation Report was delivered on May 18, 2017. A discipline authority acting under Section 112 found the allegations not substantiated on June 2, 2017.

[3] The PCC appointed me to perform a Section 117 review of that finding, which I completed on July 14, 2017. I found the two allegations to be apparently substantiated and convened a discipline proceeding. On December 14, 2017 I found the misconduct to be proven. The member provided submissions under Section 125(1)(d) on January 12, 2018. Section 128(1) requires the disposition record to be delivered in Form 4 by January 26, 2018.

**Legislative Framework**

[4] Section 126 of the *Act* reads as follows.

**Imposition of disciplinary or corrective measures in relation to members**

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [complainant's right to make submissions], the discipline authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing],

propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,
- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- (d) the likelihood of future misconduct by the member,
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
- (g) the range of disciplinary or corrective measures taken in similar circumstances, and
- (h) other aggravating or mitigating factors.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

### **Nature of the Misconduct**

[5] The salient portion of the facts pertaining to the allegations, as I found them, may be summarized as follows. On [REDACTED], the member arrested the complainant for driving dangerously on his motorcycle over a protracted distance, during which time he eluded an attempt or attempts by other officers to stop him. At the time of the arrest, the complainant was not being actively pursued, and had voluntarily stopped his motorcycle and dismounted.

[6] While the complainant was standing beside his motorcycle, the member took the complainant physically to the ground. I found that this occurred while the complainant was in the process of complying with the member's direction to dismount and get to the ground. I found that the driving pattern did not support a conclusion that the complainant was a fight or flight risk once he had voluntarily stopped his motorcycle, and gotten off in apparent compliance with a direction to do so.

[7] I rejected the member's assertions that he assessed the complainant as "actively resistant," and that he intended to use a controlled takedown. I found that he knocked the complainant to the ground, landed on him with a knee, applied a further knee strike and an "arm bar", and attempted to pull off the complainant's full-face motorcycle helmet without undoing the chin strap.

[8] After removing the helmet, the member cast it to the side, causing a crack or scratches to the visor. In searching the complainant, the member removed three cell phones from his pockets and tossed them to the pavement a few feet from the complainant, causing cracks to the screens of two of them.

[9] I characterized this sequence of actions on the part of the member as an unreasonable over-reaction to the complainant's driving pattern and flaunting of the traffic rules, and to the fact that he had been eluding police attempts to stop him. I distinguished "eluding" from "evading" and found that the evidence did not support a conclusion that the complainant knew he was being pursued.

[10] The complainant provided a statement describing his injuries as sprained shoulders; bruises and scrapes to his face, ribs, right knee, elbows and wrists; and a sore neck. Some of these were documented in the jail record. The complainant did not provide any medical records relating to his injuries. He confirmed that two of his cell phones had damaged screens.

### **Aggravating and Mitigating Circumstances**

(a) Seriousness of the Misconduct

[11] The member's actions consist of the use of unnecessary force and causing damage to property, which I found to have arisen from an over-reaction to the actions of the complainant in operating his vehicle. I would characterize the member's behaviour as a failure to regulate his emotions in relation to the events preceding the arrest.

[12] I disagree with counsel for the member's submission that the misconduct relates only to recklessness as to whether the complainant was actively resistant. I rejected the member's assertion that he believed the complainant was actively resistant, based on a credibility finding. In the absence of a belief that the complainant was actively resistant, the application of any kind of "takedown" was excessive, in my view. In that respect, the nature of the member's conduct in employing an unnecessary physical takedown must be considered to have been deliberate. Moreover, I found that the member did not intend to employ a controlled takedown, but that his physical impact with the complainant was inconsistent with anything other than an intent to knock him to the ground.

[13] I also do not agree with member's counsel's characterization of the driving and lawfulness of the arrest as mitigating factors. They are part of the context, however, and in terms of abuse of authority, this is lower on the scale, for instance, than the use of excessive force in circumstances where a member knew he had no grounds to arrest. In that sense, there is perhaps the absence of an aggravating circumstance.

[14] Counsel submits that if the driving pattern established that the complainant was actively fleeing police at the time of the stop, it would not have been unreasonable for the member to conclude that this active resistance continued after the stop. He points to the fact that three officers in addition to the member concluded that the complainant was evading police and could therefore be considered actively resistant. For these reasons counsel submits that the conduct is at the lower end of the scale.

[15] The facts posed by counsel are hypothetical. This is not a case where the police chased a driver to the location of the stop and the driver left his vehicle without direction in an apparent attempt to flee. It is not a case of simple recklessness as to the degree of resistance. I rejected the member's assertion that he assessed the complainant as actively resistant and found that the fact that the complainant stopped and dismounted his vehicle voluntarily in this case demanded a reassessment as to his level of resistance which the member declined to perform. I found that the application of force was intentionally excessive.

[16] I would characterize the use of excessive force in these circumstances as moderately serious. The circumstances are aggravated by what I have found to be the additional use of excessive and unnecessary force following the takedown, and the fact that there were injuries to the complainant. Member's counsel and the use of force expert both concluded that there were no injuries, but they were clearly described by the complainant in his statement and documented to some extent in

the booking sheet. The fact that medical records were not submitted does not detract from the complainant's assertion that there were injuries.

[17] The additional allegation of damage to property, indicating a continued pattern of excessive behaviour, is a further aggravated factor, although I recognize that the allegations are to be separately considered. I found that the member's actions in relation to the complainant's property were callous and that the damage caused was an inevitable result. Member's counsel submits that this finding does not amount to wilful blindness and that it should be characterized as a lack of proper care. I differentiate the actions of the member in deliberately tossing the items, from what I might consider a lack of proper care, such as placing them in a precarious position and being reckless as to whether they fell. This demonstrated callousness is higher on the scale of intentionality.

(b) Record of Employment

[REDACTED]

[REDACTED]

[REDACTED]

(c) Impact of Proposed Measures on Member, His Family and His Career

[REDACTED]

(d) The Likelihood of Future Misconduct by the Member

[22] Based on my assessment of the factors under (b) above I conclude that the likelihood of future misconduct of a similar nature is not insignificant, without some corrective measures.

(e) Whether the Member Accepts Responsibility for the Misconduct and is Willing to Take Steps to Prevent its Recurrence

[23] Counsel has submitted that the use of force would have been appropriate if the member's assessment of the driving pattern and consequent level of resistance had been accepted. While I do not necessarily attribute to the member the characterization of the events suggested by his counsel, I do not take from these

submissions that the member accepts that the level of force he employed, and his continued use of force, were wholly excessive and unnecessary in the circumstances. This is complicated by the fact that three other officers concluded that they were not; and that my findings are based on a conclusion that the complainant was not actively evading police at the time of the stop. The member has his recourse if he differs with this finding; however, for these purposes I cannot say I am satisfied that the member has demonstrated a willingness to embrace a different approach in pursuing police objectives.

(f) The Degree to Which the Municipal Police Department's Policies, Standing Orders or Internal Procedures, or the Actions of the Member's Supervisor, Contributed to the Misconduct

[24] This is a mitigating feature. It appears from the evidence that the current use of force policy and perhaps the national use of force framework, at least as interpreted by the expert and other members of the relevant department, may support the member's view that a hard takedown of a dangerous driver who has eluded police over a considerable distance and length of time is justified, or at least that such a driving pattern does not demand a reassessment of the driver's level of resistance following the stop. If that is the case, the policy or interpretation of it may have contributed to the member's misconduct.

(g) The Range of Disciplinary or Corrective Measures Taken in Similar Circumstances

[25] Counsel did not provide comparable cases. I have considered the following cases, posted on the OPCC website: Bowser Decision, PH 2012-01: [https://opcc.bc.ca/wp-content/uploads/2017/04/12-01\\_Casson\\_Part\\_II.pdf](https://opcc.bc.ca/wp-content/uploads/2017/04/12-01_Casson_Part_II.pdf), Page Decision, PH 2012-03: [https://opcc.bc.ca/wp-content/uploads/2017/04/12-03\\_Pitfield\\_Decision\\_Part\\_2.pdf](https://opcc.bc.ca/wp-content/uploads/2017/04/12-03_Pitfield_Decision_Part_2.pdf), and Gibbons Decision, PH 2013-06: [https://opcc.bc.ca/wp-content/uploads/2017/04/PH-13-06\\_Filmer\\_Decision\\_Part\\_2.pdf](https://opcc.bc.ca/wp-content/uploads/2017/04/PH-13-06_Filmer_Decision_Part_2.pdf).

[26] In the Bowser decision, an officer applied unnecessary force in effecting an arrest consisting of a kick, several knee strikes and the manner in which he handcuffed the complainant. The degree of force was more serious than that here, in that a kick was involved, but otherwise similar. There were no injuries. The officer had no service record in 15 years of policing. He had suffered economic consequences pending the outcome of the discipline proceeding and was accepting of the adjudicator's decision. Counsel made a joint submission, which was accepted, in favour of a two-day suspension without pay, retraining in the use of force with an emphasis on de-escalation training, and a professional assessment focused on anger issues.

[27] The Page case involved excessive force against a handcuffed complainant, an assault to which the member had pled guilty in criminal court, which was described in the discipline decision as "not of the most severe kind," and moderate, due to a sudden and unexplained loss of temper. The complainant did not require medical attention. The officer had already undertaken anger management training. The adjudicator imposed a penalty of 3 days' suspension without pay.



[28] Gibbons involved a more serious incident in which a suspected prohibited driver who was stopped refused to roll down his window. The officer broke the window entered the car and punched the complainant three times in the head, breaking his hand in the process. He had one entry on his discipline record and an otherwise exemplary service record. The penalty imposed was a one-day suspension without pay and training in the use of force, including situation assessment and de-escalation techniques.

(h) Other Aggravating or Mitigating Factors

[29] None have been submitted or arise from the evidence.

### **Analysis and Conclusion**

[30] Section 126(3) prescribes that if I consider that one or more disciplinary or corrective measures are necessary, I should prioritize an approach that seeks to correct and educate the member, unless it is unworkable or would bring the administration of police discipline into disrepute.

[31] Based on the cases cited, I have considered whether a suspension of short duration might be necessary. I note that in each of the cases the circumstances were arguably more aggravated than here, in one way or another. The imposition of a suspension is several steps above the measure imposed for the member's prior misconduct, and seems somewhat unrelated to the aims of correcting and educating.

[32] The step below suspension, to reassign the member within the department, is something I also briefly considered, perhaps an assignment to uniform duties for a time; however, I do not have sufficient information at this stage to assess whether that would be workable. I do not see working under close supervision as a necessary measure. The next steps are training, counseling, or attendance at a program. A combination of these measures and a written reprimand seem best designed to correct and educate the member while providing the appropriate level of police discipline from a public interest perspective.

January 26, 2018