

CONCLUSION OF PROCEEDINGS

Pursuant to s. 133(6) of the *Police Act*, RSBC 1996 c.367

OPCC File 2016-11867

April 25, 2018

To: [REDACTED] (Complainant)

And to: [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: The Honorable Judge Carol Baird Ellan (ret'd) (Discipline Authority)
Retired Judge of the Provincial Court of British Columbia

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

On [REDACTED], the Office of the Police Complaint Commissioner (OPCC) received a report in relation to media coverage of an incident involving a motorcyclist and a member of the Vancouver Police Department (VPD) on [REDACTED]. A monitor file was opened until further information was received.

On [REDACTED], [REDACTED] of the Vancouver Police Department's Professional Standards Section forwarded a Request for an Order for Investigation, advising the OPCC that the [REDACTED] of a [REDACTED] had provided a copy of CCTV video footage that captured a portion of the [REDACTED], incident to his department.

A review of the CCTV video footage shows the motorcycle coming to a stop while being followed by a police vehicle. The police vehicle's lights are then activated and officers exit the police vehicle. The motorcycle rider gets off of his motorcycle as the officer's approach him. [REDACTED] then approaches the motorcycle rider and pushes him to the ground. [REDACTED] then delivers knee strikes to the left torso of the rider and the motorcyclist is then placed in handcuffs.

Having reviewed the information provided by [REDACTED], the Police Complaint Commissioner was of the opinion that the conduct alleged against [REDACTED], if substantiated, would constitute misconduct, specifically *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* and accordingly, pursuant to section 93(1) of the *Police Act*, the Police Complaint Commissioner ordered that the alleged misconduct be investigated by the Vancouver Police Department.

On [REDACTED], the Office of the Police Complaint Commissioner received additional information from Professional Standards Investigator, [REDACTED]. [REDACTED] advised that during [REDACTED] interview of [REDACTED], [REDACTED] stated that his Samsung cellular phone's screen was cracked and that his motorcycle helmet visor had been cracked and scratched.

[REDACTED] further advised that he had viewed the video depicting the arrest of [REDACTED], observing [REDACTED] pull the motorcycle helmet off of [REDACTED] and throw it to the side, then remove a cellular phone from [REDACTED] pocket and toss it to the ground, at which time it appears to break.

Having reviewed the information provided by [REDACTED], the Police Complaint Commissioner was of the opinion that the conduct alleged against [REDACTED], if substantiated, would constitute misconduct, specifically, *Damage to Property of Others*, pursuant to section 77(3)(e)(i) of the *Police Act* and accordingly, pursuant to section 93(1) of the *Police Act*, the Police Complaint Commissioner ordered that the alleged misconduct be investigated.

Vancouver Police Professional Standards Investigator, [REDACTED], conducted an investigation into this matter and on [REDACTED], he submitted the Final Investigation Report to the Discipline Authority.

In the report, [REDACTED] identified the following allegations of misconduct:

1. That on [REDACTED], [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on [REDACTED]. Specifically, in pushing him to the ground and delivering knee strikes to his left torso.
2. That on [REDACTED], [REDACTED], committed *Damage to Property of Others*, pursuant to section 77(3)(e)(i) of the *Police Act* by intentionally or recklessly damaging property. Specifically, [REDACTED] motorcycle helmet and cellular phone(s).

On [REDACTED], based on the investigation by [REDACTED], [REDACTED] as the original Discipline Authority determined that the evidence did not appear to substantiate the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, nor did the evidence appear to substantiate the allegation of *Damage to Property of Others*, pursuant to section 77(3)(e)(i) of the *Police Act*.

On [REDACTED], pursuant to section 117(1) of the *Police Act*, after reviewing the allegations and the alleged conduct in its entirety, the Police Complaint Commissioner (PCC) considered that there was a reasonable basis to believe that [REDACTED] decision with respect to the allegation of *Abuse of Authority and Damage to Property of Others* was incorrect.

Therefore, pursuant to section 117(4) of the *Police Act*, and based on recommendations from the Associate Chief Justice of the Supreme Court of British Columbia, the PCC appointed the Honorable Carol Baird Ellan, retired Provincial Court Judge to review the matter and arrive at her own decision based on the evidence.

On July 14, 2017, upon review of the report and the evidence and records referenced in it, Retired Judge Baird Ellan determined that the conduct of [REDACTED] appeared to constitute misconduct. Subsequently, pursuant to section 117(9) of the *Police Act*, Retired Judge Baird Ellan became the Discipline Authority in respect of this matter. A prehearing conference was offered to [REDACTED] within which a range of disciplinary or corrective measures of suspension without pay for not more than 30 days, specified training or retraining, specified counselling or treatment, or to participate in a specified program or activity was offered.

[REDACTED] declined the offer for a prehearing conference.

On [REDACTED], a discipline proceeding was held in relation to this matter. On [REDACTED], this office received Discipline Authority Baird Ellan's findings and reasons pursuant to the *Police Act*.

In determining that the allegation of *Abuse of Authority and Damage to Property of Others* had been established, Discipline Authority Baird Ellan found that [REDACTED]' conclusion that the rider was arrestable for dangerous driving, based upon police radio communications and his observations of the motorcyclist's driving behavior, was not unreasonable. However, Discipline Authority Baird Ellan found that [REDACTED]' assessment of the rider as being actively resistant at the time of the arrest was neither credible nor reasonable.

Ms. Baird Ellan further found that the radio broadcasts did not reflect a rider who was actively resisting several attempts by police to stop him. Once the motorcyclist stopped, [REDACTED] gestured to the rider to dismount and/or get on the ground. The video depicted the rider dismounting, which Discipline Authority Baird Ellan found to indicate compliance with the officer's direction. Within two seconds, [REDACTED] made contact with [REDACTED], knocking him to the ground.

Ms. Baird Ellan determined there was no apparent resistance by [REDACTED] throughout the arrest and that his arms were underneath him because the officer had rolled him onto his front after landing on him with his knee. The application of knee strikes, removal of the helmet, and application of the arm bar were a continuation of unnecessary and excessive force.

The Discipline Authority found that video depicting the callousness with which the officer handled [REDACTED] property contradicted [REDACTED]' assertion of due care, and amply established recklessness as to whether damage to property was caused.

Ms. Baird Ellan found that [REDACTED]' actions as depicted on the video are consistent with his state of over-reaction. His fast, seemingly aggressive movements, the distance he "tossed" the items, starting with the helmet, displayed callous disregard for their preservation. The damage described by the complainant is the obvious result.

After considering the aggravating and mitigating factors in relation to this matter, Ms. Baird Ellan proposed the following disciplinary or corrective measures in relation to the allegations she had determined had were proven.

Allegation #1 - Abuse of Authority -

1. a written reprimand;
2. to the extent that such training is reasonably available, training in the use of force with an emphasis on situation assessment and reassessment, and de-escalation techniques; and
3. to the extent that such counseling is reasonably available, anger management counseling, with an emphasis on regulating emotions.

Allegation #2 - Damage to Property of Others -

1. a written reprimand;
2. to the extent that such training is reasonably available, training in the use of force with an emphasis on situation assessment and reassessment, and de-escalation techniques; and
3. to the extent that such counseling is reasonably available, anger management counseling, with an emphasis on regulating emotions.

Review Process

[REDACTED] was provided a copy of Ms. Baird Ellan's findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures at discipline proceeding. [REDACTED] was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Police Complaint Commissioner (the Commissioner) to arrange a Public Hearing or Review on the Record. Pursuant to section 136(1) of the *Police Act*, such a request must be filed within 20 business days of receipt of the review of discipline proceedings. To promote accountability in the complaint process, all findings and determinations at discipline proceeding are reviewed by the OPCC, regardless of whether a request has been made.

To date, the OPCC has not received a request from [REDACTED].

At this juncture in the complaint process, the role of the OPCC is to perform a “gatekeeping” function by conducting a review of the Discipline Authority’s findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures at the discipline proceeding. A Discipline Authority’s findings at the discipline proceeding and the disciplinary or corrective measures proposed are final and conclusive, unless the Commissioner arranges a Public Hearing or Review on the Record. The Commissioner must arrange a Public Hearing or Review on the Record if he considers the findings or determinations of the Discipline Authority were incorrect, or that a Public Hearing or Review on the Record is necessary in the public interest.

OPCC Decision

Based on a review of the available evidence, our office is satisfied that Ms. Baird Ellan, as the Discipline Authority, appropriately determined that the allegation of *Abuse of Authority* and *Damage to Property of Others* have been proven based on the reasoning provided.

The investigation determined that [REDACTED] and his partner had responded to radio broadcasts in which other officers had communicated attempts to conduct a traffic stop of a motorcyclist. [REDACTED] concluded, based on radio broadcasts and observations of the manner in which the motorcycle was being operated, that the rider, [REDACTED], was arrestable for dangerous driving.

The arrest of [REDACTED], who had come to a stop moments before the arrival of the unmarked police vehicle, was captured on CCTV. [REDACTED] exited the police vehicle, and gestured towards [REDACTED], who was dismounting from his motorcycle. Within one to two seconds of gesturing towards [REDACTED], who was standing facing him with his hands held at his side, [REDACTED] knocked [REDACTED] to the ground and landed on him with a knee. He applied a further knee strike and an arm bar while attempting to pull [REDACTED] motorcycle helmet off.

[REDACTED] removed the helmet, cast it to the side which resulted in a crack or scratches to the visor. While searching [REDACTED], [REDACTED] removed three cell phones from his pockets and tossed them to the pavement a few feet away, causing cracks to the screens of two of them.

Discipline Authority Baird Ellan reviewed the aggravating and mitigating factors in section 126 of the *Act*, and found that [REDACTED]’ actions were the result of an over-reaction to the manner in [REDACTED] was operating his motor vehicle and, therefore, characterized the officer’s behavior as a failure to regulate his emotions.

In assessing the use of excessive force, Discipline Authority Baird Ellan found [REDACTED]’ assertion that he believed the complainant was actively resistant not to be credible and determined the use of excessive force in these circumstances as moderately serious. The circumstances are aggravated by the additional use of excessive and unnecessary force following the takedown, and the fact that there were injuries to the complainant. Ms. Baird Ellan determined the damage to [REDACTED] property, indicating a continued pattern

of excessive behavior to be a further aggravating factor, as [REDACTED]' actions were callous and that the damage caused was an inevitable result.

Ms. Baird Ellan concluded by stating "...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."

We are of the view that there is no reasonable basis to believe that the Discipline Authority's findings under section 125(1) are incorrect or that they have incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128 of the *Police Act*. We are satisfied that the investigation into this matter was both thorough and professional. Therefore, it is not in the public interest to arrange a Public Hearing or Review on the Record. A Public Hearing or Review on the Record would not assist in determining the truth of the matter.

This assessment has been reviewed by the Police Complaint Commissioner who is in agreement with the Discipline Authority's characterization of the level of resistance demonstrated by [REDACTED] at the time of his arrest and the proposed discipline/corrective measures, which include a component of training and counselling. The Commissioner agrees that the discipline/corrective measures imposed are appropriate and would not bring the administration of police discipline into disrepute.

Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.

[REDACTED]

[REDACTED]

Investigative Analyst

cc: [REDACTED], Vancouver Police Department
[REDACTED], Vancouver Police Department
[REDACTED], Registrar

**Office of the Police
Complaint Commissioner**
