PH: 2016-01
OPCC File: 2011-6657 / 2012-8138

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367, AS AMENDED

AND

IN THE MATTER OF THE PUBLIC HEARING INTO THE CONDUCT OF CONSTABLE DIAZ AND FORMER CONSTABLE HUGHES

ADJUDICATOR'S DECISION ON DISCIPLINARY OR CORRECTIVE MEASURES FOR CST. DIAZ

Public Hearing Counsel:	Bradley Hickford
Commission Counsel:	Greg DelBigio, K.C.
Counsel For Cst. Diaz:	David Butcher, K.C.

Introduction & Overview

[1] This is my decision on the appropriate disciplinary or corrective measures to be imposed on Cst. Diaz for abusing his authority by recklessly using unnecessary force on Mr. Charles Kenneth Riby-Williams on August 10, 2011. Cst. Diaz was and remains a member of the South Coast BC Transportation Authority Police Service, commonly referred to as the Metro Vancouver Transit Police.

[2] The circumstances are set out in my decision dated December 29, 2022. In brief, Cst. Diaz and his partner Cst. Hughes encountered Mr. Riby-Williams in the "fare paid" zone of the Rupert Street SkyTrain Station in Vancouver. Mr. Riby-Williams had not paid a fare. There was some difficulty in obtaining Mr. Riby-Williams's name in order to issue

him a violation ticket, and ultimately the officers decided to arrest him for obstruction for not properly identifying himself. Mr. Riby-Williams physically resisted arrest but was not assaultive towards the officers. After a brief physical struggle, Mr. Riby-Williams attempted to flee by running out of the SkyTrain Station and away from the officers. The officers gave chase and, in the course of apprehending him, Cst. Diaz struck Mr. Riby-Williams repeatedly about the head and upper body with his baton, resulting in serious injuries.

[3] Cst. Diaz admitted that his actions constituted abuse of authority by using unnecessary force contrary to s. 77(3)(a) of the *Police Act*. In my earlier decision I found it had not been proven that Cst. Diaz's use of unnecessary force was intentional, rather than reckless. That is, I was not convinced that Cst. Diaz deliberately used excessive force against Mr. Riby-Williams, in the sense of knowing in the moment that the amount of force he was using was unnecessary.

[4] As mentioned in my earlier decision, the history of these proceedings is unfortunately very lengthy. A summary of much of that history can be found in the Court of Appeal's decision in *Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner)*, 2020 BCCA 221. I will not review the entire procedural history here, but I reiterate that I agree with the Court of Appeal that the "history of these proceedings may aptly be described as 'tortured,' and that the process fell well short of the goal of the 2010 amendments to the police complaint process of 'timely decisions'": *Diaz-Rodriguez* at para. 44.

[5] I also note the following:

- Cst. Diaz was suspended from operational duties in October 2013 as a result of this incident and the proceedings it generated, and returned to operational duties in October 2019.

- In 2015, Cst. Diaz was charged criminally in relation to this same incident. He pleaded guilty to the charge of assault causing bodily harm and in June 2016 he received a suspended sentence and 12 months' probation.

- In September 2016, the Discipline Authority at the time in these proceedings, Chief Constable Jones of the New Westminster Police Department (as he then was), substantiated the allegation – which Cst. Diaz admitted – that Cst. Diaz used unnecessary force on Mr. Riby-Williams. Chief Constable Jones proposed to suspend Cst. Diaz without pay for five days, and to require him to take training on use of force techniques and policy applications.

- Further proceedings followed after Chief Constable Jones's decision, where the appropriate disciplinary or corrective measures were at issue, along with other alleged misconduct that Cst. Diaz did not admit to.

- Ultimately this public hearing was convened and completed, and public hearing counsel declined to pursue the other, contested allegations. Cst. Diaz continued to admit to the allegation of abuse of authority by using unnecessary force against Mr. Riby-Williams.

Law

[6] Having found that the misconduct of abuse of authority has been proven, I must now determine, pursuant to s. 143(9)(b) of the *Act*, the appropriate disciplinary or corrective measures to be taken in relation to Cst. Diaz in accordance with s. 126. Counsel have not made submissions on whether I should recommend any changes in policy or practice to the chief constable or the board of the Transit Police pursuant to s. 143(10)(c), and I do not find it advisable to do so in the circumstances.

[7] Section 126 of the *Act* governs the imposition of disciplinary or corrective measures in relation to members of municipal police departments in British Columbia.

[8] Section 126(1) sets out the measures that may be taken after a finding of misconduct has been made. These are:

(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; and/or
(k) Give the member advice as to her or his conduct.

[9] Section 126(2) of the *Act* sets out a non-exhaustive list of circumstances that must be considered in determining just and appropriate disciplinary or corrective measures. These are:

(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.

[10] Section 126(3) provides that "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."

[11] Section 126(3) does not mandate that the least onerous measures be imposed. That previous requirement was eliminated by the Legislature in 2010 (see the discussion at paras. 19-20 of *The Matter of Cst. Charters (Part 2)*, PH 14-01, dated 31 October 2014).

[12] Instead, s. 126(3) mandates that priority be given to "measures that rehabilitate (correct and educate) unless doing so would be impractical or cause the administration of police discipline to be held in low public esteem": *The Matter of Cst. Charters (Part 2)*, at paras. 21-22.

[13] In other words, "measures that are less punitive should take precedence over stricter measures that are equally likely to correct and educate the member (subject to workability and the repute of the administration of police discipline) since this would favour approaches that have correction and education, as opposed to punishment, as their primary aims": *The Matter of Cst. Steen*, RR 19-02, dated 21 November 2019, at para. 47.

[14] The concept of "workability" under s. 126(3) requires consideration of whether the proposed measures can effectively achieve the objective of correcting the member's behaviour: see the Decision of Adjudicator Neal on the Review on the Record in OPCC File No. 2017-14249, dated 18 July 2019, at paras. 145-148. It also requires consideration of whether the proposed measures are practicable from the perspective of the member and the municipal department to which they belong: see *The Matter of Cst. Jansen (Part 2)*, PH 13-02, dated 13 February 2014, at pp. 7-8.

[15] In her reasons regarding the disciplinary or corrective measures in *The Matter of Cst. Ludeman and Cst. Logan*, PH 19-01, dated 11 June 2021, Adjudicator Baird Ellan wrote at para. 7 that the "aims of the *Act* are to preserve the public interest in maintaining a high quality of policing standards and foster community respect for the administration of police discipline."

[16] The issue of whether proposed measures would "bring the administration of police discipline into disrepute" under s. 126(3) is considered from the perspective of a "reasonable person who is dispassionate and fully apprised of the circumstances of the case"; the question is "whether such a person would hold the system of police discipline in lower regard" upon learning of the proposed measures: *The Matter of Cst. Steen*, at para. 48.

Positions of counsel

[17] Public hearing counsel argues that Cst. Diaz should be suspended without pay for 20-30 days, and that anything less would bring the administration of police discipline into disrepute. Public hearing counsel relies heavily on the seriousness of the misconduct, and submits that dismissal would be appropriate if it were not for the nearly 12-year delay since the incident occurred.

[18] Commission counsel takes no position on the specific measures that should be imposed, but has made submissions on the principles that should guide my determination of the just and appropriate disciplinary or corrective measures in this case. In particular, commission counsel argues that the "dynamic between police and racialized communities" is a relevant factor in deciding whether an approach that seeks to correct and educate Cst. Diaz would bring the administration of police discipline into disrepute.

[19] Mr. Riby-Williams identifies as biracial. His father is from Ghana. While stressing there is no argument that Cst. Diaz was in fact motivated by racism, commission counsel argues that the "history of poor relations between the police and the Black community, and mistrust of police by racialized communities cannot be ignored." Instead, "the impact

of Officer Diaz's conduct upon racialized communities, and upon the mistrust that racialized communities have towards the police, is relevant to determining what is just and appropriate and what would bring the administration of police discipline into disrepute."

[20] Counsel for Cst. Diaz argues that no disciplinary or corrective measures should be imposed in the unusual circumstances of this case. Counsel submits that if it were not for the lengthy delay, the five-day suspension that Chief Constable Jones proposed would have been appropriate; however, counsel argues that at this point there is no longer any purpose to be served by imposing any disciplinary or corrective measures on Cst. Diaz.

[21] As to the issue of race, counsel submits that since there is no suggestion that Cst. Diaz's conduct was motivated by racism, it follows that the mistrust of racialized communities towards the police, and Mr. Riby-Williams' ethnicity, should not be considered as relevant factors in the analysis. Counsel submits this is not the appropriate forum to address the historic and systemic issues raised by commission counsel. Counsel further points out that Cst. Diaz is himself a member of a racialized group and an immigrant to Canada.

Discussion

[22] I begin with the circumstances that must be considered under s. 126(2).

[23] With respect to the seriousness of the misconduct (s. 126(2)(a)), Cst. Diaz does not dispute that the misconduct in this case was serious.

[24] Public hearing counsel and counsel for Cst. Diaz have made submissions on the guidance that can be taken from the criminal proceedings where Cst. Diaz was criminally convicted (upon pleading guilty) and sentenced for this same incident. Public hearing counsel submits that the fact of the criminal conviction is aggravating, or at least that it demonstrates the seriousness of the misconduct. Counsel for Cst. Diaz submits that it is relevant that the Crown proceeded summarily against Cst. Diaz, rather than by

indictment, and that the sentencing judge recognized that this was a "heat of the moment" situation and accepted a joint submission for a suspended sentence.

[25] I find that the criminal proceedings are of limited value in assessing the seriousness of the misconduct in this case. The incident was captured on video and the evidence of the serious injuries to Mr. Riby-Williams was clear and incontrovertible. Numerous factors would have influenced the decisions made by the Crown, Cst. Diaz, and the Court in the criminal proceeding. Ultimately it is for me as the adjudicator in this public hearing to determine the seriousness of the misconduct in order to decide the just and appropriate measures to be taken.

[26] I conclude that the misconduct by Cst. Diaz is properly characterized as relatively serious in comparison to other cases of excessive force. He hit Mr. Riby-Williams on and around his head multiple times with his baton, without any plausible legal basis or authority to use that degree of force. The use of unnecessary force here was objectively serious and resulted in significant injuries to Mr. Riby-Williams, which is aggravating.

[27] With respect to Cst. Diaz's record of employment (s. 126(2)(b)), public hearing counsel notes that in 2009, Cst. Diaz was reported by a supervisor to have "lost his patience on more than one occasion when dealing with suspects, causing him to act in a less than professional manner." Cst. Diaz has also been found to have engaged in discreditable conduct in 2012, and eight instances of neglect of duty in 2014. He received a written reprimand for the discreditable conduct finding and 8 days' suspension for the neglect of duty findings.

[28] Counsel for Cst. Diaz submits the findings of discreditable conduct and neglect of duty should be disregarded because they occurred after the incident at bar. Counsel submits Cst. Diaz "should be treated as a first offender." Public hearing counsel agreed that this matter should be treated as a "first offence," but maintained that the 2009 report about being impatient and unprofessional was relevant since it pre-dated this incident and revealed similar conduct or concerns to those in the present case. Commission counsel

points out that the scope of s. 126(2)(b) is broad and encompasses "without limitation... any... current record concerning past misconduct."

[29] Cst. Diaz's counsel has also provided information about Cst. Diaz's record of employment as a member more generally. Cst. Diaz began his career in law enforcement at a relatively advanced age. He was born in 1966 in Venezuela. He immigrated to Canada in 1990 and worked at a restaurant in Toronto for several years before moving to British Columbia. He then took courses in criminology while working to support himself, before getting a job as a jail guard with the Vancouver Police in 2005, where he worked until joining the Transit Police in 2008.

[30] As mentioned, Cst. Diaz was placed on administrative duties from October 2013 until October 2019. Upon his return he was under a reintegration protocol where his work was monitored and evaluated by an assigned mentor. He was also required to take certain training courses and meet other requirements. Since then the reports about him have been positive.

[31] He was described as "calm and respectful to those he has interactions with" in a mentorship report in November 2019. Another report stated that he "exhibited a calm demeanour which de-escalated numerous situations during this reporting period [January 2019 to March 2020], especially when dealing with intoxicated and mentally ill [subjects]." In a performance assessment dated February 2023, it was noted that there were "no issues whatsoever in his performance, presentation, and workplace behaviours."

[32] I find that Cst. Diaz's record of employment as a member, including his service record of prior discipline and other records concerning past misconduct, is a roughly neutral factor. It appears he struggled with impatience and a lack of professionalism very early in his career, but I do not have specific details of that, and there was nothing that rose to the level of proven misconduct. He was found to have engaged in unrelated misconduct in 2012 and 2014, which I find is not irrelevant but also is not especially aggravating. The weight of this misconduct is attenuated by the fact it occurred after the misconduct in this case, and it is unrelated. As public hearing counsel concedes, it is

appropriate to treat this matter as a first offence. Cst. Diaz was on administrative duties for six years as a result of the proceedings that followed this incident, and since then there have been no issues with his performance.

[33] Regarding the impact of the proposed disciplinary or corrective measures on Cst. Diaz and his family and career (s. 126(2)(c)), obviously the lengthier the suspension without pay (if any), the greater the impact will be.

[34] Counsel for Cst. Diaz argues, however, that the "impacts on Cst. Diaz's career or family would be relatively minor in comparison to the very significant losses visited upon him and his family as a result of his long assignment to administrative duties" from 2013 to 2019. Counsel points to evidence in the record – which has not been challenged – to the effect that Cst. Diaz lost tens of thousands of dollars in potential overtime pay during his reassignment, and was also delayed in eligibility for promotions and related salary increases. With respect to his family, Cst. Diaz says that he and his wife, who have one child together, decided not to have more children as a result of the financial and career uncertainty arising from the protracted proceedings under the *Police Act* after the incident occurred.

[35] In my view these are relevant factors to consider in determining the appropriate measures to be imposed, but I find they are more properly considered in relation to the issue of delay in this case, which is addressed separately further below. For purposes of s. 126(2)(c) I simply find that a long period of suspension without pay will have a meaningful financial impact on Cst. Diaz and his family, and likely at least some negative impact on his career.

[36] Public hearing counsel does not argue that there is a substantial likelihood of future misconduct by Cst. Diaz under s. 126(2)(d), and I find the risk is low. This incident occurred over a decade ago and there have been no issues or concerns since Cst. Diaz returned to operational duties. This is mitigating.

[37] Cst. Diaz accepts responsibility for the misconduct in this case (s. 126(2)(e)). He admitted to using unnecessary force against Mr. Riby-Williams in these proceedings, and this is mitigating. He also pleaded guilty in the criminal proceedings, and at his sentencing hearing in the criminal case in June 2016, Cst. Diaz addressed the Court and apologized and expressed remorse for his actions in striking Mr. Riby-Williams.

[38] I do not have information on what steps Cst. Diaz is willing to take to prevent the recurrence of similar misconduct. As mentioned, Cst. Diaz has already undergone a reintegration protocol as part of his return to operational duties. I have found there is a low risk of future misconduct. Given the delay and intervening events since this incident occurred, it is not surprising that the parties did not address this factor in their submissions.

[39] Public hearing counsel submits that this case has "nothing to do with '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'" under s. 126(2)(f). According to public hearing counsel, Cst. Diaz "bears sole responsibility for his actions on August 10, 2011."

[40] Counsel for Cst. Diaz submits that there is "no doubt that the Transit Police expects their officers to be proactive with fare evaders" and that "Cst. Diaz... would have been subject to legitimate criticism if [he] had simply walked away from Mr. Riby-Williams..." Counsel also notes that two senior Transit Police officers who reviewed the circumstances of this incident found that Cst. Diaz's use of force was appropriate in the circumstances and consistent with police training, as set out in memoranda that were prepared in late 2011. Counsel submits that it is "almost inconceivable how they could have come to that conclusion, but that does reflect the middle management response or attitude towards the use of force in the Transit Police at the time" as well as the prevailing "workplace culture" at the time.

[41] I agree that it was not reasonably open to Cst. Diaz to simply walk away from Mr. Riby-Williams or let him flee after resisting arrest, but I do not find that this reduces his

responsibility for using a degree of force that was clearly disproportionate and excessive. It is not as though his only options were to either do nothing, or do exactly what he did.

[42] I do however accept the submission that the senior officers' opinions, that the use of force was proper, has at least some relevance. It is troubling that two senior officers separately concluded that Cst. Diaz's actions were consistent with departmental training. In light of this evidence, I find it is likely that Transit Police use of force policies at the time played some contributing role in Cst. Diaz's misconduct. The degree or extent of that contribution is unclear on the record before me. Ultimately, I find this is a mitigating factor that is entitled to some limited weight.

[43] With respect to the range of disciplinary or corrective measures taken in similar circumstances (s. 126(2)(g)), public hearing counsel advised he was "unable to locate any precedent with respect to the serious level of misconduct where a police officer had assaulted a citizen and caused them bodily harm and received a conviction for the offence." Public hearing counsel provided a table summarizing the measures that were imposed in 16 different excessive force cases under the *Police Act*, but said that most of these involved much less serious circumstances than this case.

[44] Out of the 16 case summaries provided, 10 involved suspensions without pay between 1 and 3 days. One case involved an 8-day suspension. None of the cases involved suspensions longer than 8 days. There was one case where the member was dismissed, which apparently involved an "off-duty police officer… punching a handcuffed female in the face after being advised by attending officers that they had the female under control." That is the only information I was provided about the circumstances of that case, where the decision to dismiss the officer was made at a discipline proceeding.

[45] One of the cases that is summarized is Adjudicator Baird Ellan's decision following the public hearing in *The Matter of Cst. Ludeman and Cst. Logan*, PH 19-01. In that case, one member had his rank reduced for using unnecessary force that included baton strikes to the upper arms and legs, a bear-hug, head-butts, kicks, and punches, after he had unlawfully entered the complainant's home. The officer was responding to a reported

domestic assault, and when the complainant (the subject of the domestic violence report) refused to let him into the house, the officer essentially forced his way in, resulting in a melee. Another member involved in the same incident was suspended for 8 days without pay for pushing and punching two other people in the house.

[46] Counsel for Cst. Diaz has cited a number of public hearing decisions where suspensions between 1 and 3 days were imposed, specifically PH 08-01 (Smith); PH 10-03 (Dickhout); PH 12-01 (Bowser); PH 12-03 (Page); and PH 13-06 (Gibbons).

[47] After reviewing these precedents I do not necessarily find support for public hearing counsel's submission that it would be appropriate to dismiss Cst. Diaz if not for the lengthy delay since the misconduct in this case occurred. As noted, the one case that is cited in which the member was dismissed involved an officer who was off-duty and who punched a restrained and subdued detainee in the face. While much more force was used in this case, Cst. Diaz was on duty and, as noted in my previous decision, all of the excessive force occurred while Mr. Riby-Williams was actively resisting arrest.

[48] From my review of the cases that counsel have provided, the range of measures for abuse of authority by using unnecessary force runs the gamut from advice as to conduct all the way up to dismissal. Short suspensions are common, and are often accompanied by requirements to undertake training or work under close supervision. Of course, no two cases are exactly alike.

[49] Out of all the cases that were provided, I find *The Matter of Cst. Ludeman and Cst. Logan*, PH 19-01, to be the most factually similar to the present case. It is also a relatively recent decision. In that case one member (who used his baton, among other uses of force) had his rank reduced, and the other member (who used punches and chest strikes) was suspended for 8 days. Notably, unlike Cst. Diaz, the members in that case did not accept responsibility for their misconduct (at least not as early or as fully as Cst. Diaz) and there was a lingering concern about the risk of future misconduct.

[50] As alluded to earlier, counsel have raised two circumstances that are not specifically listed in s. 126(2)(a) to (g) but may be considered under s. 126(2)(h). These are the issue of Mr. Riby-Williams's racial identity and the issue of procedural delay.

[51] Again, commission counsel submits that I should consider the impact of Cst. Diaz's conduct on racialized communities, and the mistrust that racialized communities have towards the police, in determining what measures are just and appropriate and whether a corrective and educative approach would bring the administration of police discipline into disrepute. Counsel on behalf of Cst. Diaz strongly resists this submission and says these matters should play no role in the analysis. I repeat that commission counsel does not suggest Cst. Diaz's misconduct in this case was actually motivated by racism.

[52] I accept that members of racialized groups are overrepresented in the justice system, including in negative police interactions, and experience "over-policing," as several organizations and individuals told the BC Legislative Assembly Special Committee on Reforming the Police Act (see the Committee's April 2022 report, "Transforming Policing and Community Safety in British Columbia" at pp. 58-59). I also accept that this wider context is a relevant consideration in determining the just and appropriate disciplinary or corrective measures in this case.

[53] In my view, in deciding whether an approach that seeks to correct and educate would bring the administration of police discipline into disrepute, it is appropriate to recognize the nature of the relationship between the police and racialized communities, including Black Canadians. Recognizing this consideration, and the wider impact of the unnecessary use of force by police officers on members of racialized minority groups, will further the aim of the *Police Act* of fostering community respect for the administration of police discipline, as articulated by Adjudicator Baird Ellan in *The Matter of Cst. Ludeman and Cst. Logan*, PH 19-01. This is an appropriate consideration in this case even though Cst. Diaz himself is a member of a racialized minority group. The issue here is the relationship between the police and racialized communities, not the relationship between one racialized group and another.

[54] For these reasons, I conclude that the impact the type of misconduct Cst. Diaz engaged in has on racialized communities, particularly Black Canadians, and their relationship to the police, is a contextual factor that tends to militate against an approach that is purely corrective and educative, and against imposing no measures at all as Cst. Diaz suggests should be done.

[55] At the same time, I must not lose sight of the fact that my task is to determine the just and appropriate disciplinary or corrective measures in relation to the specific misconduct by the individual member before me in this public hearing. The measures must be proportionate and individualized. The wider context is a relevant, but not overwhelming consideration. Obviously, if this incident had been racially motivated, that would be a very different matter.

[56] This brings me to the issue of procedural delay. Public hearing counsel and counsel on behalf of Cst. Diaz seem to agree this is a highly relevant factor in this case, and something that should result in a more lenient disposition than if there had not been such severe delay. I agree.

[57] Counsel part company on what the appropriate measures are, either with or without the delay. As mentioned, public hearing counsel submits that dismissal would be appropriate if not for the delay, and says that instead Cst. Diaz should be suspended for 20 to 30 days. Counsel for Cst. Diaz says that without the delay a five-day suspension would be suitable, but in light of the delay and all that has happened since the incident in question, there is no longer any purpose to be served by imposing any disciplinary or corrective measures.

[58] There is merit in the submission on behalf of Cst. Diaz that any suspension under s. 126(1)(c) will pale in comparison to the consequences Cst. Diaz has already faced as a result of this incident and the proceedings it generated. Cst. Diaz was placed on administrative duties for six years, losing tens of thousands of dollars' worth of potential overtime and missing out on opportunities for promotion and salary increases.

Significantly, Cst. Diaz and his spouse decided not to have more children, as they had intended to, because of these financial costs and ongoing financial uncertainty while these proceedings went on.

[59] In addition, as part of his return to operational duties, Cst. Diaz took additional training and worked under supervision, essentially eliminating the need for corrective and educative measures such as those that might be ordered under ss. 126(1)(e) to (h) of the *Act*.

[60] After much uneasy deliberation, I find that to impose no disciplinary or corrective measures at all would bring the administration of police discipline into disrepute, even after accounting for the delay in this matter and its effect on Cst. Diaz. The primary reason for this is the seriousness of Cst. Diaz's misconduct, and the significant impact it had on Mr. Riby-Williams. In order to preserve public confidence in the administration of police discipline, it is necessary that some measures be taken to hold Cst. Diaz accountable and to reflect the severity of his misconduct. For the same reasons, a corrective and educative approach is also inappropriate.

[61] In the unusual and unfortunate circumstances of this case, I find that the just and appropriate disciplinary or corrective measure is a two-day suspension under s. 126(1)(c). If not for the serious delay in this matter, I would have proposed, at a minimum, a much longer suspension.

Conclusion

[62] For the foregoing reasons, I conclude that the appropriate disciplinary or corrective measure to be taken in relation to Cst. Diaz for abuse of authority by using unnecessary force on Mr. Riby-Williams is a two-day suspension under s. 126(2)(c) of the *Act*.

Ronald A. McKinnon
Adjudicator

June 20, 2023