

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

**AND**

**IN THE MATTER OF [REDACTED] AND [REDACTED]**

**NOTICE OF DISCIPLINE AUTHORITY'S DECISION**

TO: [REDACTED] Complainant  
AND TO: [REDACTED] Members  
[REDACTED]  
AND TO: [REDACTED] Investigator  
AND TO: Mr. Stan Lowe Police Complaint Commissioner

---

The circumstances that give rise to the complaint:

On the [REDACTED] the complainant [REDACTED] and [REDACTED], [REDACTED] [REDACTED], had been socializing with friends at the [REDACTED]. [REDACTED] attempted to leave that establishment but came back to the table and said that there had been a stabbing out front and that police were directing patrons to exit through the back door so that it would not interfere with their crime scene. [REDACTED] did not want [REDACTED] [REDACTED] out in the alley on [REDACTED] own so [REDACTED] decided to leave with [REDACTED]. The two of them were walking down the alley side-by-side and were quite near a dark coloured vehicle when they realized that it was moving backwards toward them. [REDACTED] stepped in front of [REDACTED] and thumped down on the trunk of the vehicle. Tail lights went on. [REDACTED] had moved out of the way but [REDACTED] was still behind the car so [REDACTED] may have hit it a second time.

[REDACTED], who was driving the vehicle, heard a loud thump and did not know what had hit the unmarked police car. [REDACTED] thought [REDACTED] might have used a [REDACTED] hand, a weapon, a tool or some other object. [REDACTED] was carrying on up the alley past

the vehicle and [redacted] tried to stop [redacted]. [redacted] was obstreperous and non compliant. [redacted] radioed for assistance. Several officers responded. [redacted] was handcuffed. [redacted] searched [redacted] and remained with [redacted] until the police wagon arrived and [redacted] could be transported to the police detachment lockup. [redacted] was held in custody there for about two hours, spending most of that time in handcuffs.

On [redacted], [redacted] telephoned the Vancouver City Police Department and laid a complaint. This was forwarded to the Office of the Police Complaint Commissioner who identified the following four alleged misconducts:

1. *Abuse of Authority* pursuant to section 77(3)(a)(i) of the Police Act by intentionally or recklessly arresting [redacted] without good and sufficient cause.
2. *Abuse of Authority* pursuant to section 77(3)(a) of the Police Act by engaging in oppressive conduct towards a member of the public in relation to the handcuffing of [redacted].
3. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Police Act by failing to promptly and diligently do anything that it is one's duty as a member to do in relation to failing to inform [redacted] of the reason for [redacted] arrest.
4. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Police Act by failing to promptly and diligently do anything that it is one's duty as a member to do in relation to failing to provide medical assistance to [redacted] and to provide [redacted] with adequate clothing.

[redacted] of the VPD's Professional Standards Section was assigned the investigation. On [redacted], [redacted] delivered his Final Investigative Report to the Disciplinary Authority, [redacted]. On [redacted], [redacted] issued his decision on this matter as required by Section 112 of the Police Act. He identified four allegations of misconduct involving [redacted], [redacted], [redacted] and [redacted]:

1. That on the [redacted], [redacted] and [redacted], committed *Abuse of Authority* pursuant to section 77(3)(a)(i) of the Police Act, which is oppressive conduct toward a member of the public, including, without limitation, by intentionally or recklessly arresting [redacted] without good and sufficient cause.

2. That on the [REDACTED], [REDACTED] and [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a) of the Police Act by engaging in oppressive conduct towards a member of the public in relation to the handcuffing of [REDACTED].

3. That on the [REDACTED], [REDACTED] committed *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Police Act by neglecting without good and sufficient cause to promptly and diligently do anything that it is one's duty as a member to do in relation to failing to inform [REDACTED] of the reason for [REDACTED] arrest.

4. That on the [REDACTED], [REDACTED] and [REDACTED], committed *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Police Act by neglecting without good and sufficient cause to promptly and diligently do anything that it is one's duty as a member to do in relation to failing to provide medical assistance to [REDACTED] and to provide [REDACTED] with adequate clothing.

[REDACTED] determined that none of the four allegations against [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were substantiated. Upon reviewing the allegations and the alleged conduct the OPCC was satisfied with the findings that the handcuffing, the failure to inform [REDACTED] of the reason for [REDACTED] arrest and the failure to provide medical assistance and proper clothing were not substantiated. The Commissioner was of the view that there were reasonable grounds to believe that the decision of the Discipline Authority as it related to the arrest of [REDACTED] was incorrect. Accordingly pursuant to the provisions of Section 117(9) of the Police Act, he appointed me in my capacity as a retired Provincial Court Judge to review the matter and arrive at my own conclusions.

Evidence and Findings as they relate to [REDACTED]:

[REDACTED] was alone in an unmarked police car when [REDACTED] first came to [REDACTED] attention. When [REDACTED] banged on the rear of his vehicle, [REDACTED] exited the car and tried to detain [REDACTED]. [REDACTED] was belligerent and uncooperative so [REDACTED] radioed for assistance. In [REDACTED] duty report, [REDACTED] said:

Several other officers arrived seconds later and assisted me in getting the [REDACTED] onto [REDACTED] stomach and then we were able to handcuff [REDACTED]. Once the [REDACTED] was handcuffed [REDACTED] continued to yell and swear, I explained to [REDACTED] that [REDACTED] is under arrest for Breach of the Peace and a mischief charge may be added if there is damage to the police vehicle...

The [redacted] was then identified as [redacted]. I then left [redacted] in the custody of [redacted] and continued on with my original task from the stabbing investigation and followed the ambulance to the hospital.

In a later interview, [redacted] said that [redacted] could not remember who helped [redacted] handcuff [redacted].

[redacted] describes [redacted] involvement in these terms:

At approximately 2256 hours, I was standing out front of the [redacted] when I heard, [redacted] broadcast over the police radio that [redacted] required a cover unit to assist [redacted] with taking someone into custody beside the [redacted]. I attended to the rear lane. As I was approaching the rear of the lane I could hear a [redacted] voice yelling. [redacted] had a [redacted] (later identified to me as [redacted]) in handcuffs and [redacted] was belligerent and yelling....

I conducted a pat down search of [redacted]. At that time, [redacted] left to follow the ambulance to hospital and I took custody of [redacted]. The police wagon arrived at some point to the lane and [redacted] was transported to jail via the police wagon by the wagon driver.

When interviewed by the investigator, [redacted] said, "I believe when I arrived back there [redacted] was already in handcuffs. I don't remember the handcuffing process at all so I think [redacted] was already cuffed. I think [redacted] was standing up."

[redacted] too indicated that [redacted]'s role was limited to doing a pat down search and remaining with [redacted] until the police wagon arrived. [redacted] said, "The [redacted] cop, [redacted] was fine. [redacted] did [redacted] job fine. [redacted] searched me in a proper manner."

On the evidence, it does not appear that [redacted] was a party to the arrest and therefore the allegation that [redacted] abused [redacted] authority by intentionally or recklessly arresting [redacted] without good and sufficient cause is not substantiated.

Pursuant to s. 117(11) of the Police Act, my decision as it relates to [redacted] is not open to question or review by a court on any ground. It is final and conclusive.

#### The Law Governing Arrest For Breach Of The Peace:

Section 31 (1) of the Canadian Criminal Code provides that:

Every peace officer who witnesses a breach of the peace and everyone who lawfully assists the peace officer is justified in arresting any person whom he

finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

In addition to this statutory authority to effect the arrest of an individual who is committing a breach of the peace, police also have a common law authority to arrest without warrant when they honestly and reasonably believe that such a breach will be committed in the immediate future. *Hayes v Thompson* (1985), 127C.C.C. (3d) 254, 44C.R. (3d) 316, [1985] 3W.W.R. 366 (B.C.C.A.)

When the investigator asked [REDACTED] on what grounds [REDACTED] arrested [REDACTED] for a breach of the peace, the member explained:

Based on the policy, there must be a reasonable belief that if police don't intervene, violence or damage to property will result. [REDACTED] demonstrated that based on [REDACTED] behaviour, [REDACTED] was unreasonable to deal with, [REDACTED] was aggressive, yelling, swearing, would not listen to any of us trying to have a conversation with [REDACTED]. I believed if I released [REDACTED], [REDACTED] would have maintained that behaviour, it would have gotten [REDACTED] either a victim of violence or [REDACTED] would be using violence against someone else.

The policy [REDACTED] is referring to is the Breach of Peace Policy found in the Vancouver Police Department's policy manual. The second paragraph of the section cited says:

Vehement or emotional verbal expression of disagreement with police does not constitute a breach of the peace, if such behaviour does not otherwise create a risk of violence, or damage to property.

Evidence and Findings as they relate to [REDACTED]:

In my view the reasonableness of [REDACTED]'s belief that [REDACTED] had breached the peace and if not arrested would renew that breach of the peace turns on the motivation ascribed to [REDACTED] banging on the rear of the officer's car and then approaching [REDACTED] window yelling and swearing. If [REDACTED]' explanation is accepted, [REDACTED] was startled and acted defensively when [REDACTED] realized [REDACTED]'s vehicle was backing into [REDACTED] and [REDACTED]. Rather surprisingly, at no point does [REDACTED] make any reference to [REDACTED]' explanation for [REDACTED] behaviour. There is no way of telling whether [REDACTED] thought it was a total fabrication or whether [REDACTED] just considered it irrelevant.

██████████ said ██████████ was nearly finished backing up when a ██████████ stepped in front of the rear of ██████████ vehicle and began hitting it. ██████████ then walked toward the driver's side door while yelling and swearing. Did ██████████ view this as a random attack arising from ██████████' generalized bad temper? ██████████ does not explain but if this was ██████████ belief then since ██████████ did not calm down over time it would be reasonable to fear that other objects or people might become ██████████ target if ██████████ was allowed to carry on.

I turn then to the facts as related by those who were at the scene. ██████████ said ██████████ and ██████████ were walking down the alley when they noticed a black vehicle. ██████████ was trying to move ██████████ to the side when ██████████ saw something flicker and realized the vehicle was moving back towards them. ██████████ thumped the trunk area with both hands and yelled to let them know ██████████ was there. Red tail lights went on. ██████████ did not realize these might be brake lights and since ██████████ was still in the path of the vehicle, ██████████ may have hit it again.

██████████'s description of the event is similar. ██████████ said that at first ██████████ and ██████████ were side by side but that when ██████████' saw that the car was moving ██████████ stepped in front of ██████████ ██████████ as it was about to hit ██████████. ██████████ described a two handed thump on the back of the car. If there was a second thump, ██████████ did not see it.

██████████ reported that there were a number of people congregated in the laneway but that they were up against the walls of the surrounding buildings. The centre of the alley was clear when ██████████ began to reverse. ██████████ said ██████████ was moving at a very slow speed and was looking over ██████████ shoulder the entire time. ██████████ was nearly finished backing up when a ██████████ stepped in front of the rear of ██████████ vehicle and began hitting it. At the time ██████████ did not know if ██████████ had hit the vehicle with ██████████ hand, a weapon, a tool or some other item. When the ██████████ struck ██████████ vehicle it made a loud bang and ██████████ slammed on ██████████ brakes. Under further questioning, ██████████ said that ██████████ appeared from the side and ██████████ started hearing banging. ██████████ did not mention seeing ██████████ at all.

After the vehicle had stopped ██████████ said ██████████ went to pass the car and the next thing ██████████ knew someone was trying to put ██████████ on the ground. ██████████'s report is more detailed. ██████████ said that ██████████ approached the driver side window of ██████████ vehicle yelling

and swearing. [REDACTED] rolled down [REDACTED] window and from [REDACTED]' demeanor [REDACTED] concluded that [REDACTED] had not realized till then that this was a police vehicle and that the driver was an officer. Upon seeing [REDACTED], [REDACTED] passed by the car and attempted to walk away.

[REDACTED] wanted to check the vehicle for damage so [REDACTED] told [REDACTED] to stop and when [REDACTED] did not obey [REDACTED] got out of the car and grabbed [REDACTED] by the arm. [REDACTED] was uncooperative. [REDACTED] told [REDACTED] to stop resisting. When [REDACTED] continued, [REDACTED] arrested [REDACTED] for Breach of the Peace. [REDACTED] said [REDACTED] believed that at that moment [REDACTED] posed a risk to public safety and would continue to be confrontational and violent toward members of the public.

Taking into account the reports of [REDACTED], [REDACTED] and [REDACTED] I find on a balance of probabilities that [REDACTED]'s vehicle was still reversing and was within arm's reach of [REDACTED] when [REDACTED] struck it. The officer applied [REDACTED] brakes after hearing the bang. Though [REDACTED] was driving very slowly and had been looking over [REDACTED] shoulder the whole time, [REDACTED] must have been distracted or momentarily looked away since [REDACTED] did not see [REDACTED] at all and probably did not see [REDACTED] until [REDACTED] hit [REDACTED] vehicle. Had [REDACTED] seen [REDACTED] before that, [REDACTED] would have applied the brakes before getting so close to [REDACTED]. Though in [REDACTED] reports, [REDACTED] said [REDACTED] "began hitting" and that [REDACTED] "started hearing banging," [REDACTED] also said that when [REDACTED] struck [REDACTED] car it made a loud bang and [REDACTED] slammed on the brakes. Based on that, despite the earlier use of a verb tense that suggested a continuing action I find that there was one thump on the back of the car possibly followed by a second after [REDACTED] had put on the brakes. I conclude then that it was reasonable and perhaps necessary for [REDACTED] to bang on the car to avoid being hit.

While it is neither necessary nor especially reasonable after a near accident to approach the driver yelling and swearing, this would not be an unusual response. From that point on [REDACTED] was trying to effect an arrest and [REDACTED] was vociferously protesting. To quote the wording of the Vancouver City Police Policy Manual, it was a classic example of "Vehement and emotional verbal expression of disagreement with police."

Wally Oppal QC, a retired judge of the Court of Appeal, said in a January 28, 2017 decision under section 117 of the Police Act:

I would add that the use in the Police Act of the word “reckless” (in both of the s. 77 subsections at issue here) is consistent with the fact that Police Act disciplinary matters involve an objective component. That is to say, the assessment of a misconduct allegation is not dictated by the individual officer’s personal intention or “good faith”; rather it also involves an objective question as to the reasonableness of what the officer believed and did. While an officer’s subjective belief will always be relevant, and may mitigate a misconduct allegation, the analysis does not start and end with the subjective component. It is necessary to assess objectively whether what the officer believed and did was reasonable.

What were [REDACTED]’s beliefs about this initiating scene? [REDACTED] did not say. [REDACTED] was very vocal and repeatedly tried to explain. [REDACTED] and [REDACTED], the driver of the police wagon, both reported on [REDACTED] explanation for [REDACTED] actions but [REDACTED] did not mention it at all. There is no evidence that [REDACTED] considered [REDACTED] story, nor any indication of why [REDACTED] might have rejected [REDACTED] explanation. [REDACTED] cannot, in my view, be said to have acted reasonably when [REDACTED] has neglected to even try to assess the reason that [REDACTED] hit [REDACTED] vehicle, particularly since [REDACTED] explanation, if accepted, would have negated any concerns that [REDACTED] was likely to carry on and randomly confront or attack other members of the police force or the general public.

#### CONCLUSION AND NEXT STEPS

Pursuant to my authority under s. 117(9) of the Police Act, I am satisfied that on review of the record before me, the allegation that on the 24<sup>th</sup> of May, 2017, [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a)(i) of the Police Act, which is oppressive conduct toward a member of the public, including, without limitation, by intentionally or recklessly arresting [REDACTED] without good and sufficient cause appears to be substantiated.

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

- a. For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate the single allegation



as against [REDACTED]. This constitutes misconduct and requires the taking of disciplinary or corrective measures;

- b. A prehearing conference will be offered to [REDACTED]  
[REDACTED]
- c. [REDACTED] 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 include:
  - i. Giving advice to [REDACTED] as to [REDACTED] conduct;
  - ii. Reprimanding [REDACTED] in writing;
  - iii. Reprimanding [REDACTED] verbally.

Dated at Surrey, British Columbia this 21st day of February, 2018.



Hon. Carole D. Lazar, Discipline Authority