

## CONCLUSION OF PROCEEDINGS

Pursuant to s.120(16) of the *Police Act*, RSBC 1996, c.367

OPCC File: 2017-13587  
June 25, 2018

To: [REDACTED] (Complainant)

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

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

And to: [REDACTED] (Prehearing Conference Authority)  
New Westminster Police Department

On June 26, 2017, the Office of the Police Complaint Commissioner (OPCC) received a registered complaint from [REDACTED] describing his concerns with members of the Delta Police Department (Delta PD) and Abbotsford Police Department (Abbotsford PD).

[REDACTED] reported that on [REDACTED], he was stopped for a 'routine licence check' by [REDACTED] of the [REDACTED], as well as [REDACTED] of the [REDACTED] and [REDACTED] of the [REDACTED]. The three officers are members of the Lower Mainland Integrated Road Safety Unit (IRSU).

The stop occurred on [REDACTED] in [REDACTED]. At the time of the stop, [REDACTED] was driving his friend's company car. After providing his driver's licence and vehicle registration to [REDACTED] confirmed with [REDACTED] that he had permission to operate the vehicle. [REDACTED] reportedly kept asking [REDACTED] questions about the company that owned the vehicle and advised [REDACTED] that if he did not provide the three of them with company information they would assume the vehicle was stolen and it would be impounded. [REDACTED] reported he had already told them he had provided them with all of the information he had.

At this time, as all three members were standing at the driver's side door, they told [REDACTED] to get out of the vehicle. [REDACTED] reported that he opened the door, stood up carefully and was not demonstrating violence or aggressive behaviour in any way. At this time, [REDACTED]

██████████ reportedly jumped on ██████████, grabbed him by the throat, bent him backward over the open car door and choked ██████████ while screaming "You are under arrest!" and "Stop resisting arrest!" The other two officers reportedly tried to grab other parts of ██████████'s body but were getting in each other's way.

██████████ yelled he was not resisting arrest and ██████████ ██████████ choked ██████████ some more before he collapsed face first on the pavement. ██████████ advised that the officers got on his back, still yelling for him to stop resisting arrest, handcuffed him and locked him in the back of the police cruiser driven by ██████████ ██████████

██████████ reported that ██████████ ██████████ donned black leather gloves and went through everything in the vehicle he was driving, pulling the contents of the truck onto the pavement and emptying the dash before putting the vehicle on the back of a tow truck which promptly left. Soon after, ██████████ advised that ██████████ ██████████ opened the door and told ██████████ he was being released on a promise to appear.

When ██████████ asked about where his vehicle was, he was told that it was taken because it was stolen. ██████████ advised he was told by ██████████ ██████████ that the three officers were alleging that ██████████ had committed the offenses of assaulting a police officer and obstructing a police officer and told ██████████ to sign the papers.

Later that afternoon, the owner of the company contacted ██████████ ██████████ and demanded the immediate release of the vehicle into ██████████'s care, which it was a few days later. ██████████ advised that all three police vehicles had dash cameras and all three vehicles were focused on his vehicle throughout the incident.

The allegations contained in ██████████'s complaint were reviewed and the allegations concerning the decision by ██████████ ██████████ to seize and search the vehicle ██████████ was driving, the arrest of ██████████ by ██████████ ██████████ and the force used by ██████████ ██████████ to arrest ██████████ were determined to be admissible. Accordingly, the complaint was forwarded to the Professional Standards Section of the Delta PD for investigation.

Delta PD Police Professional Standards investigator, ██████████ ██████████, conducted an investigation into ██████████'s allegations and on January 22, 2018, he submitted the Final Investigation Report to the Discipline Authority.

In the report, ██████████ identified the following allegations of misconduct in relation to the conduct of ██████████ ██████████

1. That on ██████████, ██████████ ██████████ committed *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* by intentionally or recklessly, making an arrest without good or sufficient cause.

2. That on [REDACTED], [REDACTED] [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* when in the performance or purported performance of duties, intentionally or recklessly using unnecessary force on [REDACTED]
3. That on [REDACTED], [REDACTED] [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 search and seizure of the vehicle [REDACTED] was operating.

In the report, [REDACTED] identified the following allegations of misconduct in relation to the conduct of [REDACTED] [REDACTED]

4. That on [REDACTED], [REDACTED] [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 search and seizure of the vehicle [REDACTED] was operating.

[REDACTED] concluded that all four allegations in relation to the conduct of [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were unsubstantiated in his Final Investigation Report submitted on January 22, 2018. The Discipline Authority, [REDACTED] [REDACTED] agreed with [REDACTED] [REDACTED]'s conclusions, in his decision on February 5, 2018.

As the OPCC had a reasonable basis to disagree with the findings of [REDACTED] [REDACTED] the OPCC appointed retired Provincial Court Judge Mr. David Pendleton pursuant to section 117 of the *Police Act* to review the conclusions of [REDACTED] [REDACTED] and the evidence referred to in the Final Investigation Report.

In his decision dated April 26, 2018, Mr. Pendleton concluded that the conduct of [REDACTED] [REDACTED] [REDACTED] did not constitute misconduct. Mr. Pendleton also concluded that the evidence does not appear to suggest [REDACTED] [REDACTED] conducted the search or made the decision to seize the vehicle [REDACTED] was driving.

Mr. Pendleton concluded that the conduct of [REDACTED] [REDACTED] in relation to [REDACTED] [REDACTED]'s decision to arrest [REDACTED] and to use force on [REDACTED] [REDACTED]'s person, appears to constitute misconduct. He offered [REDACTED] [REDACTED] a Pre-Hearing Conference pursuant to section 120 of the *Police Act*.

A prehearing conference was offered to [REDACTED] [REDACTED] and was held on June 6, 2018, before [REDACTED] [REDACTED] of the New Westminster Police Department as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

Allegation #1 - *Abuse of Authority* - a verbal reprimand and training related to legal update on arrests of individuals and articulating the grounds for arrest

Allegation #2 - *Abuse of Authority* - a verbal reprimand and training related to legal update to use of force policies.

A report following the prehearing conference was received at our office on June 11, 2018. In reviewing the investigation conducted by [REDACTED] and considering all the relevant factors in this case, it is the view of the OPCC that the Prehearing Conference Authority has appropriately considered the aggravating and mitigating factors pursuant to section 126.

The OPCC understands that, as per the report from [REDACTED], [REDACTED] considered, in rendering his decision as to the appropriate disciplinary and corrective measures, the negative impact to public confidence in the work of municipal police forces whenever a person is arrested without good and sufficient cause. The OPCC also notes that [REDACTED] considered the negative impact to public confidence in the work of municipal police forces whenever a police member uses physical force on a member of the public, even to a lower degree, and where such force is deemed to be excessive.

The OPCC also understands that [REDACTED] [REDACTED] acknowledged and admitted the disciplinary defaults concerning his decision to arrest [REDACTED] and to use physical force to effect the arrest. The OPCC also understands that [REDACTED] [REDACTED] has 14 years of policing experience, with no previous substantiated complaints on his service record of discipline.

It is the OPCC's view that the disciplinary and corrective measures imposed by [REDACTED] [REDACTED], although on the low end for the range of acceptable discipline, is not unreasonable or unworkable and would not bring the administration of police discipline into disrepute.

Therefore, the agreement reached at the prehearing conference is approved and the resolution is final and conclusive. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with the *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], Delta Police Department