

April 26, 2018

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

AND

IN THE MATTER OF A REVIEW OF AN ALLEGATION OF MISCONDUCT AGAINST

[REDACTED] OF THE ABBOTSFORD POLICE DEPARTMENT

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST

[REDACTED] OF THE DELTA POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION

TO: [REDACTED] Complainant

AND TO: [REDACTED] Member
c/o Abbotsford Police Department
Professional Standards Section

AND TO: [REDACTED] Member
c/o Delta Police Department
Professional Standards Section

AND TO: [REDACTED] Investigating officer
c/o Delta Police Department
Professional Standards Section

AND TO: Mr. Stan Lowe Police Complaint Commissioner

Introduction

1. This matter arises from a complaint that resulted from a traffic stop of a motor vehicle driven by the complainant. The vehicle was stopped by [REDACTED], the complainant was arrested by [REDACTED] and the vehicle was searched by [REDACTED] and R.C.M.P. [REDACTED]. [REDACTED] conduct is not being reviewed in this matter. The incident occurred on [REDACTED] in [REDACTED].

2. The complainant [REDACTED] filed a complaint alleging misconduct against [REDACTED] and [REDACTED] on [REDACTED]. The Police Complaint Commissioner determined the complaint was admissible and directed [REDACTED] of the Delta Police Force to investigate the complaint. [REDACTED] considered the evidence and delivered his report on [REDACTED]. He concluded the evidence did not substantiate any alleged misconduct. On [REDACTED], [REDACTED] of the [REDACTED] Police Department, as the Discipline Authority (DA) issued his decision pursuant to section 112 of the *Police Act*. Specifically, [REDACTED] identified the following one allegation of misconduct involving [REDACTED] of the Abbotsford Police Department and three allegations of misconduct involving [REDACTED] of the Delta Police Department:
 - i. That on [REDACTED], [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* when he seized and searched the vehicle driven by [REDACTED].

 - ii. That on [REDACTED], [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* when he arrested [REDACTED].

- iii. That on [REDACTED], [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* when he used force to arrest and handcuff [REDACTED].
- iv. That on [REDACTED], [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* when he participated in the seizure and search of the vehicle [REDACTED] was driving.

[REDACTED] determined that each of the allegations involving [REDACTED] and [REDACTED] did not appear to be substantiated.

3. The Police Complaint Commissioner reviewed the Discipline Authority's decision and concluded there was a reasonable basis to believe that the decision was incorrect in relation to each of the allegations of misconduct. Pursuant to Section 117, I was appointed to conduct a review.

Section 117

4. The statutory authority governing this review is set out in Section 117 of the *Police Act*. If, on review of a discipline authority's decision under section 112(4) or 116(4) that conduct of a member or former member does not constitute misconduct, the police complaint commissioner considers that there is a reasonable basis to believe that the decision is incorrect, the police

complaint commissioner may appoint a retired judge recommended under subsection (4) of this section to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

(6) The police complaint commissioner must provide the retired judge appointed with copies of all reports under sections 98, 115 and 132 that may have been filed with the police complaint commissioner before the appointment.

(7) Within 10 business days after receiving the reports under subsection (6), the retired judge appointed must conduct the review described in subsection (1) (a) and notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(8) Notification under subsection (7) must include

- (a) a description of the complaint, if any, and any conduct of concern,
- (b) a statement of a complainant's right to make submissions under section 113,
- (c) a list or description of each allegation of misconduct considered

by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

- (i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;
 - (ii) whether or not a prehearing conference will be offered to the member or former member under section 120;
 - (iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and
- (e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officers reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

5. A review of the Section 117 case law and the case cited as 2016 BCSC 1970 defines my role as the adjudicator. I must review the material delivered under subsection 117(6) and determine whether or not the conduct of the

member appears to constitute misconduct. The law is clear that, because the adjudicator may become the discipline authority in relation to discipline proceedings, my job is not to reach conclusions about the conduct of the member, rather, it is to assess only whether it appears to constitute misconduct.

6. The review is a paper based process of the record provided by the Commissioner. There are no witnesses or submissions. Section 117(1)(b) directs the adjudicator to make "her or his own decision on the matter."

Reports and Material Considered

7. Pursuant to sec. 117 (6) the Commissioner provided the following materials for my review.
 - (a) Final Investigation Report of [REDACTED] and attachments described as: registered complaint, progress reports, OPCC notices, civilian statements, members statements, supporting documents, videos, photos and legislation/case law.
 - (b) Additionally, I have considered the Notice of Appointment of Retired Judge dated February 26, 2018 and the relevant case law and statutory authority.

Section 117(8)(a) Description of the Complaint and Conduct of Concern

8. The conduct of concern arose out of the routine traffic stop of a vehicle driven by the complainant. [REDACTED], [REDACTED] and [REDACTED] were in separate unmarked police cars working with the [REDACTED] targeting prohibited and unlicensed drivers. [REDACTED] stopped the complainant's car. [REDACTED]

provided [REDACTED] with his valid driver's licence and the vehicle's registration. The vehicle was owned by a numbered BC company and [REDACTED] told [REDACTED] he had permission to drive the company car. [REDACTED] returned to his police car, made enquires regarding the driver and the registered owner and became suspicious the complainant may not have permission to drive the vehicle and the vehicle may have been taken without the owners permission. [REDACTED] and [REDACTED] then arrive at the scene in their vehicles. [REDACTED] dashboard video camera records what occurs thereafter. There is a second video recovered from a nearby retail store that also records the scene. The complainant remains seated in the vehicle for a considerable period of time but eventually gets out and stands by the open car door. The three police officers are present and within seconds [REDACTED] pushed the complainant backwards bending him over the open door. There is a struggle involving [REDACTED] and [REDACTED] and [REDACTED] as the two officers try to handcuff [REDACTED]. [REDACTED] and the officers fall to the ground out of view of the cameras. The complainant is seen next with his hands cuffed behind his back being led by [REDACTED] to [REDACTED] police car.

9. There is no audio recording of what was said by the members and [REDACTED]. The continuing portion of the recording shows [REDACTED] and [REDACTED] searching through the complainant's vehicle. The conduct of concern depicted by the videos is the arrest and use of force in the arrest as well as the seizure and search of the vehicle driven by [REDACTED].

Section 117(8)(c) - Allegations of Misconduct Considered

10. Having reviewed the evidence referenced in the report, I identify the following allegation of misconduct against [REDACTED] that could appear to be substantiated:
1. Abuse of authority by intentionally or recklessly seizing and searching the vehicle driven by [REDACTED] contrary to Section 77(3)(a)
11. Having reviewed the evidence referenced in the report, I identify the following allegations of misconduct against [REDACTED] that could appear to be substantiated:
1. Abuse of authority by intentionally or recklessly arresting [REDACTED] without good and sufficient cause contrary to Section 77(3)(a)(i)
 2. Abuse of authority by intentionally or recklessly using unnecessary force on [REDACTED] contrary to Section 77(3)(a)(ii)(A)
 3. Abuse of authority by participating in the seizure of [REDACTED] vehicle contrary to Section 77(3)(a)

I am mindful of the limitation to the definitions of misconduct in Section 77 found in Section 77(4):

77(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

Section 117(8)(d)(i) Whether the Evidence Appears Sufficient to Substantiate the Allegations

The allegation against [REDACTED]

12. In his statement [REDACTED] said [REDACTED] provided his driver's licence and the vehicle registration but would not give him any information regarding how to contact the registered owner. [REDACTED] searched his police computer, contacted ICBC and spoke to a person named "[REDACTED]" who was an employee of the company that owned the vehicle. He was unable to determine whether [REDACTED] had permission to have the vehicle. [REDACTED] said,

I mean at the end of the day, my belief was it was a [REDACTED] vehicle. I was getting no cooperation from [REDACTED]. I exhausted anything possible I could do roadside in that thirty minute window including have two separate officers try to attend to him. He was explained the reasons why and he just kept referring us back to the ICBC insurance documents and we can phone ICBC for that information.

13. [REDACTED] said he was concerned the vehicle was taken without the owners consent and he made the decision to seize the vehicle. In a second statement he gave on [REDACTED] he said:

So during the initial stop obviously there was some concerns of mine that I believe the car was a [REDACTED]. My intention was never to arrest or detain [REDACTED] during that time, as I was unable to confirm and solidify, that in fact the registered owner gave or did not give permission. My intention was to have [REDACTED] grab his stuff and leave on his own accord and not to arrest or detain him for that. I wanted him to basically leave or provide me obviously, the

information for the owner so I could solidify that and send him on his way in that car.

14. Reading the statements of [REDACTED] and [REDACTED] it appears that they attempted to get the information regarding the registered owner from [REDACTED] so that [REDACTED] could determine if the complainant had permission to have the vehicle. [REDACTED] was aware [REDACTED] was going to impound the vehicle and have it towed. In his [REDACTED] statement [REDACTED] said:

We pointed to [REDACTED], I said, he doesn't believe that this is your car. He believes that you're actually like not authorized to be in the car. The reason we're asking you these questions 'cause he believes that and his mentality is that if he can't satisfy himself he's gonna impound the car if he can't get a hold of the registered owner. And there was no secret surrounding that, like we told him that [REDACTED] wants to tow the car because he believes that you're taking the vehicle without the owner's consent. Just give us something, anything, give us a phone number, a name. No, no. I don't have to tell you, no. I don't hav..., you can call ICBC, figure it out for yourselves.

15. The video shows [REDACTED] moving his police vehicle closer to the [REDACTED] vehicle effectively blocking it from leaving the parking lot. The record suggests he has called for a tow truck by this time and he is seen on the video exiting his car shortly before [REDACTED] opens his car door and steps out. Very shortly thereafter the physical altercation occurs between [REDACTED], the complainant and [REDACTED].

16. In reviewing this matter pursuant to the Police Act, it is appropriate in my opinion to consider whether [REDACTED] conduct was necessary in the proper performance of authorized police work. If his conduct was necessary then his actions do not constitute a disciplinary breach of public trust (Section 77(4)).
17. [REDACTED] said he felt it necessary to impound the vehicle until he completed his investigation regarding whether [REDACTED] had the permission of the registered owner to possess it. [REDACTED] was suspicious but he wasn't intending to detain and arrest the complainant. He appears to appreciate he didn't have reasonable and probable grounds to do so; however, his duties as a police officer include keeping the peace, protecting property, preventing crime and investigating crime.
18. In *R. v. Waterfield*, [1963] 3 All ER 659 the court discusses when and in what circumstances a police officer's common law duties would permit him to seize a vehicle. The Court held that a police officer's duties include keeping the peace, preventing crime, and protecting property from criminal injury. The Court in *Waterfield* found that the officers were not acting within the scope of their duties. The facts in *Waterfield* are, in my view, somewhat different from the matter I am reviewing. In *Waterfield* the registered owner was present. He was not under arrest and no charges had been laid. He wanted to move his car, but was told by the two officers he could not do so. The officers had been told by their superior to detain the vehicle but they had no personal knowledge of the circumstances surrounding why the vehicle should be detained.
19. [REDACTED] decision to seize and impound the vehicle driven by [REDACTED] appears to be in furtherance of his investigating who was the registered owner and whether [REDACTED] had permission to possess it.

Here the owner was not present, [REDACTED] was unable to determine who may have given [REDACTED] permission and he was suspicious a crime may have been committed. He also had knowledge from PRIME that [REDACTED] had been in this vehicle eight days earlier in [REDACTED] and had been stopped by the [REDACTED].

20. Having reviewed the record, the evidence does not appear sufficient to substantiate the allegation of misconduct against [REDACTED]. It appears [REDACTED] was properly carrying out his duties as a police officer when he seized the vehicle. He was protecting the property of the owner while he investigated whether a crime had been committed. [REDACTED] was not the registered owner and could not or would not assist and cooperate in the investigation. [REDACTED], of course, was under no legal obligation to do so. In the circumstances it appears he was not obstructing the officer; however, [REDACTED] had a duty to act as discussed in Waterfield.
21. The video shows [REDACTED] and [REDACTED] searching the vehicle, removing various items and returning them to the vehicle. This was a warrantless search but it appears minimally intrusive and [REDACTED], not being the registered owner, would have low expectations of privacy. [REDACTED] said he was looking for documents or some proof as to the identity of the owner and he wanted a list of the contents as the vehicle was to be towed to an impound yard. Again, it appears he is pursuing his duty as a police officer to protect property and investigate possible criminal activity. [REDACTED] appears to be engaged in conduct necessary in the proper performance of authorized police work and I conclude that the evidence does not appear to substantiate the allegation of misconduct.

The allegations against [REDACTED]

23. The allegations are that [REDACTED] participated in the seizure of the vehicle, arrested [REDACTED] without good and sufficient cause and used unnecessary force on [REDACTED] during the arrest.
24. The record and the evidence, and in particular the video, shows [REDACTED] arriving at the scene and speaking with [REDACTED] and then engaging [REDACTED] in a lengthy conversation. [REDACTED] remains in the vehicle, eventually gets out and within seconds is pushed back against the open door by [REDACTED].
25. He was asked by [REDACTED] to speak to [REDACTED] in the hopes of obtaining some information that would allow the officers to contact the vehicle's registered owner. Up to that point in time it could be said that [REDACTED] participated in the seizure of the vehicle, however, I am satisfied he was engaged in the same conduct as [REDACTED], conduct that was necessary in the proper performance of authorized police work. The record and the evidence does not substantiate this first allegation of misconduct. A review of the evidence shows that [REDACTED] did not search the vehicle.
26. The second and third allegations of misconduct are that [REDACTED] arrested [REDACTED] without good and sufficient cause and used unnecessary force in doing so. In his [REDACTED] statement [REDACTED] said he arrested [REDACTED] for obstruction and he explained that the basis for the arrest was that the complainant was standing by the open vehicle door saying to the officers they weren't going to take his car. [REDACTED] said:

the obstruction was, like he just wouldn't let you get near the car, like he was standing...he was impeding us in towing the car.

27. In his written complaint [REDACTED] wrote:

The three of them were standing at the drivers door when I opened it and stood up carefully. I was not demonstrating violence or aggressive behavior in any way. [REDACTED] immediately closed the distance and jumped on me, grabbing me by the throat. He bent me backward over the open door, choking me with his huge hands, screaming 'you are under arrest' 'stop resisting arrest'. The other officers were trying to grab other parts of my body but were getting in each others way. I yelled that I wasn't arresting arrest. [REDACTED] choked me some more, and suddenly I collapsed face first on the hot pavement. The officers got on my back, still yelling for me to stop resisting arrest.

28. [REDACTED] was interviewed by [REDACTED] and described in further detail the altercation that occurred after he stepped out of the vehicle. He said he felt intimidated by [REDACTED] who was standing a few feet away and then within seconds the officer lunged at him. He said the officer's hands were around his neck choking him as he was pushed backward and bent over the open vehicle door.

29. The two videos capture what occurred after [REDACTED] gets out of the vehicle. He and [REDACTED] are facing each other separated by a few feet. In a matter of seconds, perhaps 10 to 12 seconds, [REDACTED] pushes [REDACTED] backwards into the door. His hand is up in the complainant's neck area but he does not choke the complainant with both hands. The officers hand appears to be grabbing the complainants

hand which is consistent with what [REDACTED] stated intent was to physically restrain [REDACTED], to get him to unclench his fist and to prevent what he felt was a threat to officer safety.

30. In his [REDACTED] interview with [REDACTED], [REDACTED] said:

[REDACTED] So, as he opens the door, this is now the first time that I'm seeing [REDACTED] like get out of the car, and as he stands up, he's got the key. I remember him taking the ignition key and kind of putting it in his palm like this, and I remember him going like this with it. And I thought, okay, that's not a good sign. What's he doing that for? Is that because he's not gonna give it to us, or is that because he's preparing for some kind of a confrontation with us? Is this gonna escalate further, is what was going in my mind. So as he gets outta the car, he stands up, car door is open. I'm standing probably this distance away, and [REDACTED] on the other side of the car door.

[REDACTED] And so were like, two feet away?

[REDACTED] I, I think within arms distance.

[REDACTED] 'Kay.

[REDACTED] And I see now that he's standing with both of his fists clenched down by his side. And I thought, okay, that's weird, like he doesn't look like he's getting any of his stuff anymore. Now he looks like he's got his fists clenched and he's tensed up and what's gonna happen next? So he's now facing... He's more facing [REDACTED] than he's facing me as he gets outta the car. And [REDACTED] talking to him, again, just reiterating what we had said earlier which was okay, we just need the ignition key and you can be on your way. That was the extent of what I remember him talking to him about. But he's still got his hands down like this. So, as he's talkin' to [REDACTED]

██████████, ██████████ is like, either looking at his hand or directing to his hand and he kinda goes like this, and he moves his hand away behind him or like moves it away from ██████████

██████████ Okay.

██████████ And now he's bladed [sic] to me, but I can still see that his hand had has moved behind him. And he's still clenchin' his fists and he's standing there like this. Now he's not doing anything um... He's not saying anything towards us, like hey, I wanna fight you guys, there was nothing like that but what he did say was, you're not taking my car, this is my car. I remember that distinctly. Those were the words that came out of his mouth after he got outta the car.

██████████ With his fen..., his...

██████████ With his fists clenched.

██████████ ...clenched.

██████████ Now the only thing I saw and knew that he had in his hand was his key. But why is he clenching it? Could've been two reasons. Could've been that he didn't wanna give us the key. It could've been that he was preparing for some kind physical confrontation. I didn't want it to escalate any further. I was within close proximity to him and my initial thought was, okay, maybe ██████████ doesn't see what I see 'cause there's a door between them, or maybe he's not focusing on it the way I was focusing on it but I was focusing in on his gestures, his posture. And I was focusing on his hands because I thought, well if anything's gonna happen here, it's gonna be his hands that are gonna be needing to be controlled. And so I made the decision at that point, that I'm not gonna let it escalate further, but I honestly believed that there was a safety issue between ██████████, myself and ██████████ ██████████. I firmly believed that he was a threat to my safety, he was a threat to ██████████ safety because of the proximity we

were to, to one another. And also, his words that he uttered which were, this is my car, you're not taking this car. Almost like, like you're gonna have to go through me to get this car, but that wasn't what he said, it was just that was the perc..., that's the perception that I had when he made those gestures. So I did what I thought was reasonable which was to just move in and sort of with some gentle persuasion say look, like unclench your fists. So I, I reached forward with my left hand and I tried to gain just a little light control on his wrists and say hey, like calm down, unclench your fists, you don't need to do that. And at the same time I remember [REDACTED] again, just saying like, you know, just give us the key, you can be on your way. So, [REDACTED] reaction to me reaching forward to sort of, again say to him, like hey, don't do that, unclench your fist, was he tensed up even further and he kinda pulled away. You have to realize that we're in a closely confined area where there's this door in the way, and I'm maybe two feet away from him. I didn't know what to do next except to try to control that arm, and I said to him, okay, you're under arrest. And I, I don't remember if I said under arrest for obstruction but I sai..., I told him you're..., that you're under arrest. You need to unclench your fists. And so as I grabbed a hold of wrist, and he starts to pull away, he kinda did one of these, like, like we kinda went back and forth. And then, I pushed back onto him, like I've moved forward to him. And I leaned him over the back of the door. I basically, I took control of his wrists with my, like with my one hand, and my other hand came up and I started to push him back like this, and naturally my hand slid up and it got him in the neck and the chin area, and it started to push his head back.

32. Further on in his statement he said:

And then when he opens the car to get out, I don't see anything else that raises my alarm. Like, I'm not concerned at that point that there's a safety concern, except for the fact that he's now clenched his fists, and as he stands up he's tense, his fists are down by his side...

He pulls away like this. So I knew that he wasn't going to just willingly hand over the key, although the key is not really my concern, the key is just what I see in his hand. What's my concern is, is that he's got his fists balled up and he's kind of standing there looking at us like what's... I wouldn't say fight or flight because it's not, like an instantaneous thing...

My safety concerns were, were my grounds to try to take control of him...

But when I see him clenching his fists, I'm thinking, okay, this has elevated my officer safety concern to a degree where I felt the most reasonable thing to do would be to point out to him that hey, you need to unclench your fists, you need to relax. And when I reached out to touch his wrist or to, to grab hold of his wrist, his reaction to that, by pulling back, moving his arm back, that is what led me to escalate the level of force, to go hands on so to speak.

33. [REDACTED] said he felt it was necessary to take physical control of the complainant. The complainant was clenching his fists while telling the officers they weren't going to take the car. [REDACTED] said he was afraid the officers were unsafe in these circumstances.
34. The case law holds that an officer's subjective beliefs are to be assessed on an objective standard of reasonableness (See *Berntt v. Vancouver (city)* BCSC 4310 and *Anderson V. Smith* BCSC 1194). In his decision on OPCC File 2016-11505, the retired judge held that:

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.

35. After consideration of the evidence, it appears there may be questions as to whether it was objectively reasonable to conclude, as [REDACTED] subjectively did, that the complainant was obstructing his effort to tow the vehicle and, further, that there was a threat to officer safety necessitating forcefully shoving the complainant into the car door.

36. The evidence and in particular the video shows the complainant, who is described in the material as [REDACTED] tall and weighing [REDACTED] pounds, surrounded by three armed police officers. [REDACTED] is described as a large man. The vehicle driven by [REDACTED] is boxed in by the officer’s patrol cars and could not be driven away. The complainant stopped his vehicle and produced his driver’s licence and the vehicle registration. He eventually gets out of the vehicle. [REDACTED] said [REDACTED] was not assaultive nor actively resistant up to this point. [REDACTED], a civilian witness, saw the complainant get out and speak to the officers. He could not hear what was said but he said [REDACTED] looked irritated but didn’t look aggressive and didn’t appear he was going to attack anybody.

37. [REDACTED] hands appear down at his side and it seems he was clenching his fists and had the vehicle keys in one of his hands. There was some reference in the report whether the vehicle key held in the complainant's hand was something [REDACTED] may have considered was obstructing him. [REDACTED] said the key wasn't a concern and it appears that the key was not necessary in order to tow the vehicle. [REDACTED] does not appear to make any overt or threatening gestures in the few seconds between getting out of the car and being forcefully pushed and bent backwards over the car door.
38. While [REDACTED] believed the complainant was, in these circumstances, obstructing him and posed a safety threat, it appears there are questions as to whether it was objectively reasonable for him to conclude [REDACTED] was obstructing him and posed a threat serious enough to warrant the force used upon [REDACTED].
39. The issue to be determined at this stage is whether the evidence appears sufficient to substantiate misconduct. Based on the materials and evidence contained in the report, I find the evidence appears sufficient to substantiate the allegations that [REDACTED] recklessly made an arrest without good and sufficient cause and recklessly used unnecessary force.

Next Steps

40. Pursuant to my authority under Section 117(10) of the Police Act, I am satisfied that on a review of the report and the evidence, the conduct of [REDACTED] does not constitute misconduct.
41. Pursuant to my authority under Section 117(9) of the Police Act, I am

satisfied that on a review of the report and the evidence, the conduct of [REDACTED] appears to constitute misconduct.

42. I hereby notify the relevant parties of the next steps pursuant to subsections 117(7) and (8) of the Police Act.
43. Considering the factors in Section 120, I am willing to offer a prehearing conference to [REDACTED]. The range of disciplinary or corrective measures set out in the Act, which I would consider appropriate includes:
 - a. requiring the member to undertake specified training or retraining pursuant to subsection 126(1).
 - b. reprimand the member in writing pursuant to subsection 126(1)(i)
 - c. reprimand the member verbally pursuant to subsection 126(1)(j)
 - d. give advice to the member as to his conduct pursuant to subsection 126(1)(k)
44. Pursuant to Section 113, the complainant [REDACTED] has the right to make submissions at a disciplinary hearing.
45. Under Section 119(1), [REDACTED] may file with the discipline authority a request to call and examine at the discipline proceeding one or more witnesses listed in the trial investigation report.

Dated at Victoria, British Columbia, April 26, 2018

David Pendleton

David Pendleton

Retired Judge, Adjudicator