

**In the matter of the Public Hearing into Conduct of Inspector John de Haas
of the Vancouver Police Department.**

Submissions of the Office of the Police Complaint Commissioner

I. Introduction and Overview

1. This public hearing concerns the conduct of Inspector John de Haas, a 40-year veteran of the Vancouver Police Department (“VPD”), as it relates to Constable G, at the time a special constable working at the Vancouver Jail who worked under Inspector de Haas’ supervision. The Commissioner says that the evidence established that Inspector de Haas, without the consent of Constable G, grabbed her arms from behind, removed her hands from her pockets, and proceeded to slap her right buttock with an open palm. Subsequently, after a *Police Act* investigation was commenced, Inspector de Haas circulated an e-mail, dated June 9, 2017, to all VPD inspectors, in which he set out his own version of the incident, invited the inspectors to share it with anyone they “saw fit”, and identified Constable G by name at a time when he knew she was seeking full constable status with the VPD (the “June 9 Email”).

2. Over the course of the hearing, Constable G’s evidence was at all times honest and forthright, and was largely corroborated by the other witnesses who were equally forthright in their evidence. Inspector de Haas, by contrast, was evasive and argumentative, and lacked the hallmarks of a credible witness.

3. The Commissioner says that Inspector de Haas’ conduct, which he knew or ought to have known would bring discredit to the VPD, falls well short of the standards expected of a reasonable police officer, and constitutes misconduct for the purposes of the *Police Act*.

II. Relevant Statutory Provisions

4. "Misconduct" is defined in s. 77 of the *Police Act* to mean, *inter alia*, a disciplinary breach of public trust described in s. 77(3). That section includes in subsection (h) "discreditable conduct":

(h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

(i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;

(ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act;

(iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada;

5. Public hearings are new hearings concerning a member's conduct (s. 143(2)), and are not limited to the evidence and issues that were before a discipline authority in a discipline proceeding (s. 143(3)). Public hearing counsel are required to present to the adjudicator the case relative to each allegation of misconduct (s. 143(4)). The adjudicator is required to decide whether any misconduct has been proven, and determine appropriate disciplinary or corrective measures to be taken with respect to the member (s. 143(9)).

III. Background

6. On or about June 1, 2017, the Commissioner received information from the VPD about an incident that occurred on April 4, 2017. Specifically, the Commissioner was informed that a female constable, Constable G, had been volunteering, in uniform, at a

graduation ceremony for new special constables. She was standing in the atrium of the building with her hands in her pockets. She reported that Inspector de Haas, who was also in uniform at the time, walked up behind her, removed her hands from her pockets by her forearms, said words to the effect of “don’t put your hands in your pockets”, then slapped her on the right buttock with an open palm.¹

7. On or about June 6, 2017, the Commissioner formed the opinion that the conduct alleged against Inspector de Haas, if substantiated, would constitute misconduct. The misconduct alleged was as follows:

- a. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, which is, when on or off duty conducting oneself in a manner that the members knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, that Inspector de Haas slapped a female Special Constable on the right buttock with an open palm at an official Vancouver Police Department event.

8. The Commissioner ordered an external investigation pursuant to s. 93(1)(a) and 93(1)(b)(ii) of the *Police Act*, and directed Chief Constable Dave Jones of the New Westminster Police Department to appoint an investigating officer.² He further exercised his powers pursuant to section 135(1) of the *Police Act* to designate Chief Constable Jones to exercise the powers and perform the duties of a Discipline Authority in relation to the matter.³

9. Chief Constable Jones appointed Constable F as investigator. On or about December 6, 2017, Constable F issued his Final Investigative Report, and concluded the allegation had been substantiated.⁴

¹ Exhibit 1, Notice of Public Hearing, paras. 1-3.

² Exhibit 1, Notice of Public Hearing, para. 6.

³ Exhibit 1, Notice of Public Hearing, paras. 7-9.

⁴ Exhibit 1, para. 10; Exhibit 8, Constable F

10. On December 12, 2017, the Discipline Authority informed Inspector de Haas that a discipline proceeding would be held in relation to the substantiated allegation.⁵

11. On February 21, 2018, following the discipline proceeding, the Discipline Authority determined that Inspector de Haas committed the disciplinary default of discreditable conduct, specifically, by slapping a female special constable on the buttock with an open palm at an official VPD event. He proposed as a disciplinary measure a five-day suspension without pay, and a requirement that Inspector de Haas undertake refresher training in respectful conduct in the workplace (the "Discipline Decision").⁶

12. On March 1, 2018, the Commissioner received a request from Inspector de Haas that the Commissioner arrange a Review on the Record of the Discipline Decision. Inspector de Haas raised concerns with respect to the adequacy of the investigation and bias on behalf of the Discipline Authority.⁷

13. The Commissioner observed that, because Inspector de Haas had not requested to call any witnesses, Constable G had not testified before the Discipline Authority. The Commissioner determined that the adequacy of the disciplinary process and ability to search for truth had been hampered. He therefore determined that a public hearing was necessary in order to allow Inspector de Haas to introduce evidence, examine/cross-examine witnesses and make submissions, and thus address his concerns with the prior proceedings.⁸

14. The Commissioner further determined that a public hearing was necessary in the public interest pursuant to s. 138 of the *Police Act* due to the seriousness of the complaint, the fact the conduct would be likely to violate a person's dignity or privacy, the reasonable prospect the public hearing would assist in determining the truth, an arguable case that the discipline or corrective measures are inappropriate or inadequate, and to reserve or

⁵ Exhibit 1, Notice of Public Hearing, para. 11.

⁶ Exhibit 1, Notice of Public Hearing, para. 12

⁷ Exhibit 1, Notice of Public Hearing, para. 14.

⁸ Exhibit 1, Notice of Public Hearing, paras. 15-16.

restore public confidence in the investigation of misconduct and the administration of police discipline.⁹

15. On or about March 29, 2018, the Commissioner issued a Notice of Public Hearing pursuant to ss. 137(1) and 143(1) of the *Act*.¹⁰

IV. Evidence on the Public Hearing

16. In the course of the hearing, the Adjudicator heard from the female officer involved, Constable G, as well as Inspector de Haas. The Adjudicator also heard evidence from several witnesses who were present at the graduation ceremony: Constable B, Constable C, Constable D and Constable E. Constable G's supervisor, Constable A, provided evidence concerning her communication with Constable G pertaining to the incident. The Court also heard from Constable F.

A. Public Hearing Counsel's Case

17. Constable G provided her account of the April 4, 2017 incident. She advised that she was volunteering with other constables and special constables at the graduation ceremony. She was standing with Constables B and C, with her hands in her pockets. She felt hands grasp her forearms and remove her hands from her pockets. She heard a man's voice, which she recognized to be that of Inspector de Haas, state words to the effect of "don't put your hands in your pockets".

18. Constable G demonstrated that Inspector de Haas then slapped her with an open palm on her right buttock. She described the slap as similar to a spanking. Constable G froze, and her shocked expression was noted by other witnesses. Thereafter, Inspector de Haas acknowledged he should not have done that, and said "sorry". She informed the other constables and special constables she was standing with what had just occurred.

19. Shortly after the incident, Constable G went to a side room where she exchanged text messages with Constable A, who was her supervisor and friend, and informed her of

⁹ Exhibit 1, Notice of Public Hearing, para. 18.

¹⁰ Exhibit 1, Notice of Public Hearing

what had happened. While the text exchange made use of emojis and had a “joking” manner, Constable G was forthright that she was using humour to attempt to diffuse the disturbing situation, and was attempting to “lighten the mood”. Constable A corroborated that evidence.

20. Constable G’s evidence was that later, following the ceremony, she was approached by Inspector de Haas while standing with Constable E. Inspector de Haas asked Constable E if Constable G had informed her they almost had a “sexual harassment incident”.

21. Constable G’s evidence was that she was standing in the public atrium when these events occurred. Both she and Inspector de Haas were in uniform. Members of the public were present.

22. According to Constable G, she had perceived Inspector de Haas to be “flirtatious” or “creepy” with female officers in other instances. Jokes were made within the Jail about Inspector de Haas’ relationship with a civilian employee who worked on procedure manuals. On one occasion, Inspector de Haas and Constable G were alone in the control room of the Jail, and he remarked to Constable G: “oooh I like her”, with reference to the civilian employee. She testified that he was also known to have flirted with other female guards.

23. Constable G testified that Inspector de Haas was her senior officer. At the time, she was a special constable, and had applied to become a regular constable. She was aware that there were recruiting officers at the graduation event. She was nervous about reporting the incident because she was afraid of how the incident would impact the hiring process. She did not know what impact Inspector de Haas could have on that process.

24. Throughout her testimony, Constable G was honest and forthright. Her evidence was consistent with her previous statements at the investigation stage. She was unshaken on cross-examination. Notably, her evidence was largely confirmed by Constables A, B, C, D and E. While there are minor discrepancies between the evidence of the witnesses concerning, for example, where each was standing, any discrepancies

can be attributed to the fallibility of human memory, and are not material to the allegations against Inspector de Haas.

25. Most importantly, Constable G has no motive to lie. To the contrary, given her concern with her application to become a regular constable and Inspector de Haas' position of power and authority in relation to her, Constable G had an understandable concern that reporting the incident could be contrary to her own interests.

B. Inspector de Haas' Case

26. Inspector de Haas testified about his recollection of the incident. He stated that he saw Constable G socializing with her hands in her pockets, which in his view was not professional and appropriate. Her demeanor irritated him, so he went over to her to correct it. He proceeded to remove her hands from her pockets, but Constable G remained relaxed. He therefore stated to her "we don't have our hands in pockets in public".

27. Thereafter, Inspector de Haas recounts that he "tapped" Constable G on the right hip. Immediately thereafter, he acknowledged to her he should not have done so.

28. Inspector de Haas confirmed that he was in uniform at the ceremony, and that members of the public were milling about at the time of the incident. He confirmed, based on photographs, that he was one of the dignitaries at the event, although he did not speak.

29. Inspector de Haas advised that, when he learned of the allegations, he was told there were rumours circulating about the event. He confirmed those rumours and their impact on his reputation were "top of mind" when, on June 9, 2017, he sent an email to every inspector in the VPD and told them what had occurred, that the incident had been reported and was being investigated, and identified Constable G by name. He testified that he thought it important for his peers to know the facts as he saw them. He invited the other Inspectors to share the email as they saw fit.

30. Inspector de Haas confirmed under cross-examination that, when he sent the email, he knew an investigation had been ordered. He agreed that much of what he wrote

in the June 9 Email was repeated verbatim in his duty statement, which he did not provide until three months after the statement, was requested.

31. Inspector de Haas testified that he has 40 years' service with the VPD, and is presently its most long-serving member. He confirmed that he would have assumed a special constable like Constable G, working at the Jail, would be attempting to become a full-time regular police officer.

32. Inspector de Haas' evidence has changed materially since the start of the investigation. For example, he initially told Constable F that he did not believe Constable G was upset because he had a 5-10 minute conversation with her after the incident. At the hearing, after hearing the evidence from all the other witnesses, he stated that he had realized that was untrue and he had not spoken with Constable G following the incident. While under cross-examination, he agreed that the purported conversation had factored heavily in his explanation to Constable F that he had no reason to believe Constable G was upset by the incident.

33. Casting further doubt on his credibility, Inspector de Haas maintained it was "absolutely not" possible that he touched Constable G on the right buttock, and maintained that he could only have made contact with her hip. This explanation defies logic insofar as the hip and right buttock are connected to one another. His explanation that he tapped Constable G with one finger because "when I tap, I tend to use my finger" was not credible. It is a completely unnatural motion in that context. Moreover, if he had made a single one finger tap to the hip, there would have been no reason for him to concede he should not have done so and say "sorry" to Constable G.

34. There were other inconsistencies and argumentative deflections on cross-examination that demonstrate Inspector de Haas' lack of credibility, and failure to take the allegations and process seriously. For example (and this list is by no means exhaustive):

- a. Inspector de Haas refused to admit to ever gauging Constable G's attractiveness, which is simply not credible.

- b. Inspector de Haas steadfastly refused to admit that he had any reason to lie, which runs contrary to his admission that he wished to protect his reputation, and his evidence that the allegations had been very hard on his family.
- c. Inspector de Haas stated that he believes Constable G made up the allegations, and went so far as to refer to the allegations as malicious, but could not provide any explanation why Constable G would be motivated to lie or to otherwise act with malice.
- d. Before Constable F, Inspector de Haas stated he was “lighthearted” when he told Constable G to remove her hands from her pockets. At the hearing, he testified he was “calm” and was generally irritated by Constable G’s behaviour.
- e. When asked if he stood by his comment to Constable F that his actions were “fine”, Inspector de Haas grew argumentative.
- f. Inspector de Haas initially refused to even admit that he was proud of his service as a police officer, or that he was motivated by a desire to protect his “career” when he sent the June 9 Email. After extensive cross-examination, he eventually conceded he was concerned with his reputation.
- g. Inspector de Haas spent a year and a half acting as a full-time discipline authority in more than 120 investigations, and acknowledged that the *Police Act* contains confidentiality provisions regarding investigations. Inexplicably, he nevertheless maintained that the contents of the June 9 Email were essentially public information – at the least, as he told Constable F “public to me”.
- h. Inspector de Haas was highly evasive when asked in cross-examination about his delay filing a duty report, refusing to admit the fact that it took three months, and at first only acknowledged that a “period of time” had passed.

- i. Inspector de Haas maintained that he would never flirt with staff, including the civilian employee referenced by Constable G, because that type of behaviour would be highly improper or inappropriate. His profuse condemnation of such behaviour stands in stark contrast to his repeated evidence that the allegations against him, even if substantiated, were not properly the subject of a *Police Act* investigation, or something the public would be concerned about, but rather a private “labour” issue.

35. Overall, Inspector de Haas displayed many hallmarks of an incredible and evasive witness.

V. Discussion

36. The question of whether any misconduct is proven pursuant to s. 77(3)(h) asks whether Inspector de Haas, when on or off duty, conducted himself in a manner that he knew or ought to have known would be likely to bring discredit on the municipal police department. The questions are: (1) what Inspector de Haas did, (2) whether what was done would bring discredit to the department, and (3) whether Inspector de Haas knew or ought to have known it would bring that discredit. The questions are determined objectively by reference to the standards the community should reasonably expect of its police department. We turn now to address that conduct.

A. *Touching without consent*

37. It is not controversial that Inspector de Haas, without her consent, removed Constable G’s hands from her pockets by grabbing her forearms. Further, on a balance of probabilities, Inspector de Haas slapped Constable G with an open palm on her right buttock. Inspector de Haas’ assertion that he merely tapped Constable G with one finger is simply not credible.

38. Constable G’s account, including that she froze with shock, were generally corroborated by other witnesses. Constable G would not have frozen in shock at a mere tap to her hip. Nor would Inspector de Haas have apologized and admitted he should not have done what he just did if he had simply tapped Constable G on the hip.

39. Non-consensual touching, particularly when exacerbated by a slap to a buttock, is highly improper, and is the type of behaviour that would bring discredit to the VPD.

40. There is widespread public concern with similar conduct across the country.

41. Perhaps the best illustration of that is the class action litigation concerning sexual harassment and discrimination in the RCMP. In that case, representative plaintiffs brought a class action for gender-based bullying, discrimination and harassment while they were employed with the RCMP. The matter was settled with a number of monetary and non-monetary forms of compensation. Included in the settlement were institutional change initiatives within the RCMP, a public apology, and the creation of a scholarship. The settlement agreement specifically acknowledged that gender and sexual orientation based harassment, discrimination, and sexual assault have no place in the RCMP. The settlement was considered necessary to not just resolve the claims of class members, but to “restore confidence in the RCMP as an organization that values equity and equality”.¹¹

42. In the course of approving the settlement, the Federal Court acknowledged the defences available to Canada and the significant risk that the plaintiffs would not be successful at certification or at the common issues at trial.¹² The fact that Canada was willing to agree to such a settlement demonstrates the public importance of ensuring public confidence in police forces, and how that public confidence is undermined by a culture of discrimination and harassment.

43. Given the widespread public concern with a culture in police forces where women are not treated with appropriate respect, there should be no question that Inspector de Haas' behaviour would bring discredit to the VPD.

44. Inspector de Haas' behaviour must also be considered in light of the VPD's professional standards set out in its Regulations and Procedures Manual. The manual

¹¹ *Merlo v. Canada*, 2017 FC 533, para. 10.

¹² *Merlo*, para. 21.

contains a Respectful Workplace Policy,¹³ which establishes that every employee has the right to be treated fairly and respectfully in the workplace, and every person within the VPD is responsible for maintaining a workplace that is supportive, equitable, productive, and fosters the professional workplace relationships of all persons employed within the VPD. The policy prohibits workplace harassment, which is defined to include “unwanted touching of a person’s ... body”.

45. Here, Inspector de Haas’ behaviour was contrary to his obligation to avoid unwanted touching of Constable G, and his duty to maintain a respectful workplace. Inspector de Haas was in a position of power and authority over Constable G. Grabbing her by forearms to remove her hands from her pockets, and subsequently slapping her on the buttock, was clearly and obviously non-consensual. Given Inspector de Haas’ position of authority, such conduct, including effectively “spanking” Constable G for her demeanor in front of her peers, would have been likely to shame and humiliate her and contribute to a disrespectful workplace.

46. Further, when the contact occurred, Constable G and Inspector de Haas were in uniform at a public ceremony. Counsel for Inspector de Haas repeatedly put to witnesses that the incident occurred in a “fish bowl”, implying that many people could see what transpired (seemingly to suggest or imply that Inspector de Haas would not engage in such conduct in such a public place). However, the fact that the public may have been present makes it all the more likely to bring discredit to the VPD through the eyes of any members of the public who viewed it.

47. Given his very senior position, Inspector de Haas knew, or ought to have known, that the non-consensual touching, including the slap, could bring disrepute to the VPD. Inspector de Haas repeatedly stressed in cross-examination how abhorrent he would find it for senior inspectors to flirt with junior staff. Yet his apology to Constable G and comment that they almost had a “sexual harassment incident” should be taken as an acknowledgment that he knew his behaviour was inappropriate.

¹³ VPD Regulations and Procedures Manual, s. 4.1.11

48. Overall, Inspector de Haas' behaviour at the graduation ceremony constitutes misconduct. It falls far short of community standards, and is conduct that he knew, or ought to have known, would bring discredit to the VPD.

B. The June 9 Email

49. Inspector de Haas' behaviour upon learning of this complaint justifies a further finding of misconduct. This public hearing is a new hearing, and is not limited to the evidence and issues that were before the discipline authority. Given that the Adjudicator's role, pursuant to s. 143(9), is to determine if "any" misconduct has been proven, it is appropriate to deal with that allegation now, and there is no prejudice to Inspector de Haas, or need to re-open the hearing to hear further evidence.

50. Inspector de Haas does not deny (nor could he) that on June 9th, with his own reputation "top of mind", he circulated an email to all VPD inspectors wherein he identified Constable G by name and provided his version of the events in question. He invited the inspectors to distribute the email as they saw fit.

51. The sending of the June 9 Email posed a serious risk of bringing the administration of police discipline into disrepute, and falls far short of the standard of behaviour expected of (particularly senior) police officers.

52. Where a police officer attempts to influence a witness' testimony in criminal proceedings, that behaviour can constitute the offence of obstruction of justice. This is the case where the police officer intends to manipulate an investigation, even if he does not overtly attempt to interfere with a proceeding, and the offence does not involve planning and premeditation or a long pattern of behaviour.¹⁴ Such an offence is one that "strikes at the heart and integrity of the justice system". It is an offence committed by a person who was himself a member of that justice system, and who, based upon the applicable case law, has a higher duty to the public to maintain the integrity of that system."¹⁵

¹⁴ *R. v. Dosanjh*, 2006 BCPC 574, para. 19.

¹⁵ *Dosanjh*, para. 18.

53. It is no less serious that the June 9 Email was sent in the context of disciplinary proceedings rather than a criminal investigation. The Supreme Court of Canada has held that a serious perversion of justice can occur when the work of administrative tribunals and disciplinary bodies are interfered with.¹⁶

54. Constable F spoke to the concerns that he had that the June 9 Email could well hinder his investigation and his ability to arrive at the truth. Given that the June 9 Email could well have hindered the investigation, Inspector de Haas' behaviour in sending it could well justify a conclusion he attempted to obstruct justice.

55. As above, Inspector de Haas admitted that his reputation was front of mind when he sent the June 9 Email. He sent the email in an attempt to diffuse the situation and the impact it could have on him. His attempt to avoid liability instead of allowing the investigation to run its (confidential) course brings disrepute to his senior position and the VPD as a whole.

56. Further, by sending the email to all inspectors, Inspector de Haas could be taken as having attempted to poison or derail Constable G's career. His actions are likely to create a chilling effect on future reports of similar conduct and on the willingness of other witnesses to participate in investigations. His actions sent a message to Constable G and to others that reporting incidences of misconduct could lead to retaliation.

57. Notably, in the course of approving the RCMP Settlement, the Federal Court emphasized the importance of settling claims confidentially, as confidentiality safeguards are particularly important for current serving members of the RCMP.¹⁷ To the same effect, confidentiality was of particular importance to Constable G, who was only just beginning her career with the VPD. There is no doubt that behaviour of this type could have a chilling effect on the reporting of disciplinary breaches by senior officers.

58. The email is particularly troubling given that Inspector de Haas himself acted as a Discipline Authority on more than 120 cases. Inspector de Haas must have known that

¹⁶ *R. v. Wijesinha*, [1995] 3 S.C.R. 422, paras. 49-50

¹⁷ *Merlo*, para. 32.

investigations demand confidentiality. He knew or ought to have known his behaviour would bring the VPD into disrepute.

VI. Conclusion

59. In all of the circumstances, and particularly given Inspector de Haas' lack of credibility, there should be no question that the slap to the right buttock occurred. All of the non-consensual touching, including the slap and the subsequent June 9 Email, constitute conduct that Inspector de Haas knew or ought to have known would likely bring the VPD into disrepute. The Commissioner urges the Adjudicator to find that his actions constitute serious misconduct, and to invite submissions on the proper disciplinary and corrective measures.

All of which is respectfully submitted.



Dated this 10th day of August, 2018.

Mark G. Underhill
Counsel for the Office of the Police
Complaint Commissioner