

In the Matter of the Public Hearing into the Conduct of Inspector John de Haas (#549)
of the Vancouver Police Department

Before: Adjudicator Carol Baird Ellan

SUBMISSIONS OF THE RESPONDENT, INSPECTOR JOHN DE HAAS

In our submission, this case is about - perception. What was [REDACTED]'s (Cst. G's) perception of the contact she had with Inspector De Haas on April 4, 2017? What was Inspector De Haas's perception of that contact? And, most importantly, what is the public perception of the contact that has been investigated? Has Inspector De Haas committed discreditable conduct? Did he commit an act that he knew or ought to have known would be likely to bring discredit on the Vancouver Police Department?

Facts over which there is no dispute:

On April 4, 2017 a graduation ceremony was taking place for Special Constables at the Vancouver Police headquarters located at 3585 Gravelly St. The ceremony takes place in the atrium of that building. Photographs introduced in evidence, (Exhibits, 2 - 5, 7, and 9 - 11) show the atrium area to be an area surrounded by glass corridors above and below. All witnesses who testified agreed the area was a "fish bowl". That is an apt description.

For the public to gain access to the atrium, they need to be escorted through security doors via the elevators or a staircase. For security reasons, members of the public are unable to access the atrium or other areas of the building on their own. Graduation ceremonies take place in the atrium 2 - 3 times a year.

On April 4, 2017, [REDACTED] (Cst. G) was part of crew of special constables that were involved in putting up and taking down chairs for the ceremony and in escorting members of the public to and from the atrium area.

[REDACTED] (Cst. G) was in the process of applying again to be accepted as a regular constable in the Vancouver Police Department. She was at the time working in the jail as a guard. Her supervisor, three ranks above her with overall responsibility for the jail, was the respondent Inspector De Haas.

Inspector De Haas was participating in the graduation ceremony as one of the officers. The graduates and the officer party assemble down a corridor to the right of the atrium elevators (Ex 7, p. 3) and are paraded in a double line through glass doors along the atrium half wall to an area where the graduates and officers face their family and friends who are sitting on the chairs set up for them to watch the graduation ceremony (Ex. 10). Approximately 70 - 100 civilians attended for the graduation.

Prior to the ceremony commencing, Inspector De Haas observed [REDACTED] (Cst. G) standing in the vicinity of the atrium half wall to the right of the atrium (Ex 11, p. 3 top photo) with her hands in her pockets. [REDACTED]'s (Cst. G's) body was angled with her left side and back towards the elevator doors (Ex. 11, p. 3 bottom). Inspector De Haas approached [REDACTED] (Cst. G) through the glass doors from her left and behind. When behind her; he gently gripped both of [REDACTED]'s (Cst. G's) forearms at the same time and lifted her hands out of her pockets and placed them at her side. Thinking that she had no idea who he was he said something at the time, along the lines of "We don't put our hands in our pockets in public". At the same time there was contact below the waist of [REDACTED] (Cst. G) on the right side. Recognizing there had been contact there, Inspector De Haas said words along the lines of "I should not have done that, sorry."

Facts Proved on a Balance of Probabilities

When the contact between Inspector De Haas and Cst. G happened, members of the public were already in the atrium area having been escorted up for the ceremony. Others were still coming up via stairs and elevators ([REDACTED] (Cst. C); [REDACTED] (Cst. G); and Inspector De Haas).

It is part of the training and the expectation of special constables that when they are attending public events in uniform they will deport themselves in a professional manner with hands out of their pockets ([REDACTED] (Cst. E); [REDACTED] (Cst. G); and Inspector De Haas).

Facts in Dispute

What was the nature of the contact between Inspector De Haas and Cst. G following the removal of her hands from her pockets? Was it a "slap"? A "tap"? A "forceful slap"? A "pat like you would give a teammate"? A "spanking"?

Was that contact on Cst. G's right hip or right buttock?

Did Inspector De Haas later on April 4, 2017 say in conversation to [REDACTED] (Cst. D) words to the effect that we almost had an HR incident?

Position of Inspector De Haas

Inspector De Haas does not dispute that if he intentionally struck [REDACTED] (Cst. G) out of anger or due to some perverse desire to touch the constable, such conduct would constitute "discreditable conduct" within the meaning of s. 77(3)(h)(l) of the *Police Act* and therefor deserving of some sanction.

He does dispute that, other than the gentle removal of her hands from her pockets, there was any intentional touching of the Constable. It is his position and has been his position throughout that there was an unconscious tap of [REDACTED] (Cst G) below the waist which occurred while he was correcting a deportment fault of the Cst while the latter was attending a public event in uniform. He immediately recognized the touch

was to an area which could be misconstrued and apologized for the contact. It is Inspector De Haas's belief that the contact was to the hip. Whether it was to the hip or to the buttock area, [REDACTED] (Cst. G) recognized that there was nothing sexual about the contact and said so in her interview with [REDACTED] (Cst. F) on August 22, 2017.

Since that interview, and for the first time in the investigation of the complaint the touch has taken on more sinister tones and is now described by [REDACTED] (Cst. G) in this hearing as a "spanking". She now views the contact as disciplinary, that she had been bad.

In her evidence before this tribunal she also tried to back-track on what she said to [REDACTED] (Cst. F) about the incident. She claims she could not find the right words to describe the contact at the time of the interview. Page 2 of the transcript of her interview starting at line 24 she describes having her arms pulled out of her pockets. It was a just a grip on her forearms. It was a surprise. It was unexpected. She did not see Inspector De Haas coming. Inspector De Haas told her "Don't put your hands in your pockets". She then describes receiving a smack to her right buttock. [REDACTED] (Cst F) asks her to describe that contact, at line 57:

57 Cst F: *Okay. How would you describe that slap? Was it a tap? Was it like a forceful slap?*

59 Cst G: *A tap. I guess.*

60 [REDACTED]: *Did you ever play sports growing up?*

61 Cst G: *Yes*

62. [REDACTED]: *Would it be like one of your teammates..*

P.3

3. Cst G: *Yeah*

4. [REDACTED] *...giving ya, giving ya a pat on the bum?*

5. Cst G: *Yeah I think so. It didn't feel sexual in nature at all.*

When given the opportunity to describe the nature of the contact, [REDACTED] (Cst. G) was given the choice of a "slap", a "tap", or a "forceful slap". She chose "tap" and later accepted a "pat like you would give a teammate". She claims in this hearing she was at the time of the interview at a loss for words and did not know how to describe the contact. That evidence is not credible.

It is unfortunate that in order to accommodate [REDACTED]'s (Cst. G's) schedule she was not called as a witness until after all other witnesses for public hearing counsel had been called in the proceeding. It is unfortunate for the gratuitous character assassination that she made regarding Inspector De Haas suggesting there were rumours about his behaviour towards other females under his command. Based on her text messages with [REDACTED] (Cst. A), it appears that [REDACTED] (Cst. G) could herself be the source of rumours involving [REDACTED]. She alleged on the witness stand a comment made by Inspector De Haas in the control room to herself about [REDACTED]

Had [REDACTED] (Cst G) testified first, other witnesses, in particular [REDACTED] (Cst. D) who works in the administration department with Insp. De Haas, could have been questioned about any observations they may have had of flirting or inappropriate behaviour exhibited by Inspector De Haas towards staff.

Inspector De Haas denies flirting with his staff. His relationship with [REDACTED] is professional. He respects her work. He has no recollection of ever making a comment about [REDACTED] in the control room. If there was a comment by Inspector De Haas, it appears that whatever was said was taken out of context. Shakespeare's words from his play Julius Caesar are apt: "...men may construe things after their fashion clean from the purpose of the things themselves".

In our submission, [REDACTED] (Cst G.) has construed Inspector De Haas in a negative light both in her assertions as to his general behaviour and in her current interpretation of the contact between them on April 4, 2017. Is he an out of control disciplinarian or is he a creep to female staff? Counsel for the Public Hearing and Counsel for the OPCC both refer to motive to lie, that [REDACTED] (Cst. G) has no such motive, whereas Inspector De Haas, in order to protect his reputation and legacy with the Vancouver Police Department, does.

The allegation being made by [REDACTED] (Cst G) in this hearing was that this incident was a spanking. Look at the surrounding circumstances. There are members of the public present. The contact takes place in a fish bowl. [REDACTED] (Cst G) is not displaying to either the members of the public or to fellow police members the expected professional demeanour. Because there are members of the public present, Inspector De Haas, makes the decision not to make a public spectacle of calling out [REDACTED] (Cst. G) in front of others. He decided to gently, physically remove Cst. G's hands from her pockets and place them at her sides reinforcing by his comments that in public police officers do not put their hands in their pockets. Having chosen to not make a spectacle of the correction in her behaviour, you are being asked to believe by Public Hearing Counsel and OPCC counsel that he then intentionally delivered in front of 50 - 100 potential witnesses a spanking. If that is what happened, would one not only expect an immediate outcry from [REDACTED] (Cst G) to the world present but also an outcry from others. There would have been an immediate commotion.

That is not what happened. [REDACTED] (Cst. E) had the same vantage point as Inspector De Haas when [REDACTED] (Cst. G), a friend of hers, was observed standing with her hands in her pockets. She saw Inspector De Haas approaching Cst. G from the left and behind. She saw him gently take the forearms of Cst. G lift her hands from her pockets and place them at her side. She described it as being like what a drill sergeant would do. The contact was unusual so she made a note of it, but it was not so unusual that she kept watching. She turned away, her attention drawn by something or someone else.

[REDACTED] (Cst. B) is the only person who we are aware of, who claims to have seen anything. Others may have certainly been in a position to do so, but [REDACTED] (Cst F) was unable to identify any other witnesses. Exhibit 10 certainly indicates there may have been many others.

As for [REDACTED] (Cst B), unfortunately, he is not a reliable observer. He was just plain wrong about members of the public being present. He had no ability either in his duty report or his interview or in his testimony to describe the slapping motion he said he witnessed from Inspector De Haas. The contact from the removal of the hands to the slapping motion was all continuous. He could not say whether it was a left hand or a right hand used by Inspector De Haas. He thought the hand was open but was not sure. He did not hear any contact. He actually could not see any contact because his view was blocked by [REDACTED]'s (Cst. G's) body. Despite being able to hear Inspector De Haas saying we do not put our hands in our pockets, he did not hear him saying "I should not have done that, sorry". He did see a surprised reaction from [REDACTED] (Cst. G). That surprised reaction witnessed by both him and [REDACTED] (Cst.C) is as consistent with [REDACTED] (Cst.G) having been embarrassed by being caught with her hands in her pockets by her senior officer as with any contact from Inspector De Haas to her buttocks/hip. It must be kept in mind that at the time she was waiting to hear on her most recent application to become a regular member of the Vancouver Police Department. In our submission [REDACTED] (Cst. G) was worried about any potential impact her department might have on that application. It could be that it is due to her embarrassment at the time, that she now relates in this hearing she felt as if she had been bad.

[REDACTED] says he was shocked by the contact from Inspector De Haas to [REDACTED]. He was supportive of [REDACTED] (Cst. G). His interview with [REDACTED] (Cst. F) p. 5, lines 3 - 10 relate to conversation with [REDACTED] (Cst. G) in which he asks 'whether that just happened'. In our submission it is logical to infer that [REDACTED] (Cst. G) stated to [REDACTED] (Cst. B) that Inspector De Haas had slapped her butt. That is why [REDACTED] is so sure that he witnessed a slap, because that is what [REDACTED] (Cst. G) related. Any statement by [REDACTED] (Cst. G) that she was slapped was an exaggeration.

[REDACTED] (Cst. G) followed up her conversation with [REDACTED] (Cst. B) with the text messages to [REDACTED] (Cst. A), her friend and immediate supervisor. The tone of the text messages is not that of shock. It is flippant, one of laughter and disturbingly the suggestion of using the incident as a weapon to get hired. Once she described the incident to her fellow Special Constables as a slap/smack to her ass, it was a story she was obliged to stick to, until she is interviewed by [REDACTED] (Cst. F).

[REDACTED] (Cst G) was urged to talk to the sergeants in the jail. [REDACTED]'s (Cst. G's) text messages with [REDACTED] (Cst A) on April 11, 2017 reveal she was told by Sergeant [REDACTED] to "talk to Tom. There would be no love lost if De Haas was made to retire, lol". The response from [REDACTED] (Cst A) was that they would probably "throw you a party, lol".

Going back to April 4, 2017 [REDACTED] (Cst. G) and [REDACTED] (Cst. B) report overhearing a conversation between [REDACTED] (Cst. D) and Inspector De Haas at the end of the evening in which [REDACTED] (Cst. G) says in her duty report that

Inspector De Haas said something along the lines of "we almost had a sexual harassment issue". In her interview with [REDACTED] (Cst F) she reaffirms she cannot remember the exact words used. [REDACTED] (Cst. B) claims in his duty report that Inspector De Haas said something along the lines of "Did Constable G tell you about how she almost got me on an HR complaint?"

Neither [REDACTED] (Cst D) nor Inspector De Haas, the supposed participants in the conversation, can remember any such conversation taking place. If any such statement had been made, [REDACTED] (Cst. D) would remember. After all, she had already been told by [REDACTED] (Cst G) that Inspector De Haas had tapped her bottom after removing her hands from her pocket. On the witness stand, [REDACTED] (Cst. D) could not remember the exact words used, whether it was "tapped her on the bum" or "hitting her ass".

Sometimes a tap is just a tap. Following the removal of her hands from her pockets that is all the contact between Inspector De Haas and [REDACTED] (Cst. G) consisted of. In cross examination, Inspector De Haas was asked to demonstrate how he taps. Quite frankly he was being asked to guess how he might have done it. He does not know. The contact was unintentional. He immediately recognized contact had been made that could cause discomfort and apologized for it.

At the time of his interview with [REDACTED] (Cst. F), Inspector De Haas thought there was subsequent conversation between himself and Constable G. He accepts that he was wrong and was confusing other conversations with what occurred on April 4, 2017. The production of the official photographs taken on April 4, 2017 a portion of which were introduced as Exhibit 10, helped to refresh his memory as to his role on that date. He can't say today who he was talking to after the contact with [REDACTED] (Cst G) but does remember shortly after being summoned to get into the official party.

Inspector De Haas takes pride in the police force, and how it represents itself to the public. He expects the members to deport themselves in a professional manner to the public. Looking and acting professional is part of that public face. It was as a result of seeing Constable G displaying a lax attitude with her hands in her pockets while members of the public gathered for the graduation ceremony that he was motivated to act. With hindsight, today, he wishes he had used a different approach. Thinking he could avoid making a big scene, he chose to approach Constable G and physically remove her hands from her pockets. All witnesses describe this as being done in a gentle manner.

Public hearing counsel suggests that the physical removal of the hands, regardless of how gentle is in itself a disciplinary default. With respect, that is going too far. The public in our submission would not be shocked by a senior officer correcting a junior officer's deportment in that manner. Some might be surprised by the action but the Vancouver Police Department would not be scandalized by Inspector De Haas having done so.

There has never been any dispute that contact took place between Inspector DeHaas and Cst. G on April 4, 2017. It is the nature of that contact that has always been at issue. Public hearing and OPCC counsel believe it is sufficient for another person to simply make an allegation that an event happened as they say it happened, with all the undertones that they put on the event 16 months later, in which case how dare a respondent contest that version and perception of the event. If Inspector de Haas had struck a junior constable, out of anger, as part of a creepy desire to touch another officer or as part of a disciplinary measure, he would never have contested his innocence and put himself through this process. Because he has the temerity to contest that what is alleged as to the nature of the contact being sexual on now disciplinary, he has been vilified by public hearing and OPCC counsel as a liar only interested in his own reputation.

It is the lack of any intention on his part, that has led Inspector DeHaas to believe that the public inquiry process was unnecessary, that the April 4, 2017 incident could have been dealt with "in-house". That is not to say 'covered-up' but other processes used to deal with any concerns or questions that Cst. G might have had about the contact between them. Inspector De Haas is an experienced officer. He knows what tools are available to deal with workplace issues. Believing that those other tools could and should have been used does not make him contemptuous of the *Police Act* process.

OPCC counsel wants the adjudicator to find that the email sent by Inspector De Haas on June 9, 2017 to his fellow inspectors in the Vancouver Police Officers Union is itself evidence of misconduct. The email is headed "My putative transfer and constructive dismissal". Inspector De Haas explained that their officers union get to vote on any actions taken by their union. At the conclusion of his email he asks the VPOA as his collective bargaining unit to grieve the employer's actions. That is the context in which the email was sent. As the union members get to vote, he felt it necessary to provide details so that the rumours, which were already circulating, could be dealt with.

Could Cst. G's department have been better dealt with on April 4, 2017. Absolutely. Was there in the nature of the contact between Cst G and Inspector De Haas anything that would scandalize the Vancouver Police Department. Absolutely not.

All of which is Respectfully Submitted this 16th day of August, 2018



JJ McIntyre

Counsel for Inspector De Haas