

**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**

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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 (the “Member”), a 40-year veteran of the Vancouver Police Department (“VPD”), as it relates to his conduct respecting Constable G (the “Complainant”), at the time a special constable working at the Vancouver Jail under Inspector de Haas’ supervision. Two allegations of misconduct have been substantiated: first, that the Member grabbed the Complainant’s arms from behind, removed her hands from her pockets, and proceeded to slap her right buttock with an open palm. Second, after a *Police Act* investigation was commenced, that 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. The Commissioner says that there are significant aggravating factors at play that warrant a sanction that will appropriately denunciate and deter similar conduct by other members. In the circumstances of this case, an approach focused on correction or education is not workable or appropriate, and would bring the administration of justice into disrepute. In this case, the appropriate measure is a permanent demotion to the position of Constable.

II. Statutory Scheme and Legal Principles

3. Where misconduct has been proven following a public hearing, an adjudicator must determine the appropriate disciplinary or corrective measures to be taken in relation to the member or former member in accordance with ss. 126 of the *Act*.

4. Section 126(1) enumerates a number of possible disciplinary measures ranging from advising the member as to his or her conduct or verbally reprimanding the member, to reducing the member's rank or dismissing the member. If the adjudicator considers that disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member takes precedence unless it is unworkable or would bring the administration of police discipline into disrepute (s. 126(3)).

5. When deciding what disciplinary or corrective measures are just and appropriate in the circumstances, an adjudicator must consider aggravating and mitigating circumstances, including, without limitation (s. 126(2)):

- (a) the seriousness of the misconduct,
- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- (d) the likelihood of future misconduct by the member,
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
- (g) the range of disciplinary or corrective measures taken in similar circumstances, and
- (h) other aggravating or mitigating factors.

III. Discussion

A. *Aggravating and Mitigating Factors*

6. Two allegations of misconduct have been substantiated:
 - a. Discreditable conduct under s. 77(3)(h) of the *Police Act* in physically disciplining the Complainant by removing her hands from her pockets, and also by smacking or slapping her on the buttocks, which he knew or ought to have known would likely bring discredit on his department (Decision, para. 74); and
 - b. Discreditable conduct under s. 77(3)(h) of the *Police Act* by disseminating an email in which he identified and contradicted the Complainant when he knew there was a *Police Act* investigation pertaining to her complaint, which he knew or ought to have known would likely bring discredit on his department.
7. There are a number of aggravating factors that warrant a serious sanction to foster the twin goals of denunciation and deterrence.
8. With respect to the seriousness of the misconduct, senior-ranking members are held to a higher standard of conduct than lower-ranking members. Senior officers are expected to meet exemplary moral and ethical standards. In particular, as an inspector, the Member is required to set an example for exemplary ethical conduct, and to promote high standards of integrity, professional conduct and equality.
9. The June 9 Email is among the most serious forms of misconduct. As noted in the Decision, the email was “highly ill-considered”, and is made even more serious by the fact the Member served as a discipline authority on numerous *Police Act* investigations, had attended three workplace conduct training sessions, and had been reminded of his obligations not to interfere with witnesses under s. 86 of the *Police Act* (Decision, para. 67). In sending the email, the Member “must be taken to have been deliberately untruthful and intentionally contradictory of the Complainant’s version” (Decision, para. 69). The member knew or ought to have known the email “could only have had a chilling effect on

the willingness of a named complainant to pursue a complaint” (Decision, para. 68). Given his experience, he also ought to have known the email could have challenged the Complainant and other witnesses, and at the least it comes close to obstruction of justice (Decision, para. 70).

10. The June 9 Email was clearly calculated to cover up the Members’ own egregious conduct. His actions compromised the integrity and the career prospects of the Complainant. The email strikes at the heart of the integrity of the disciplinary investigative process, and represents a complete abdication of the moral and ethical standards required of someone in the Member’s senior position.

11. The physical discipline was also a serious form of misconduct. As noted in the Decision, “[p]hysical discipline in the workplace is a thing of the distant past” (Decision, para. 65). The conduct is particularly serious given the power imbalance between the Member and the Complainant. At the time, the Member was the Complainant’s most senior commanding officer. The Complainant had applied to become a regular constable, and the Member admitted he would have assumed she would be making such an application. Given his position of power and responsibility in relation to the Complainant, the physical discipline in this case is very high on the seriousness scale.

12. The member’s failure to take responsibility is a further aggravating factor. Far from taking responsibility for his actions, the Member has consistently refused to acknowledge the seriousness of his misconduct, and maintained throughout that his conduct was simply a labour relations issue. If the Member is to be believed, then, as noted in the Decision, “that would be highly disturbing”. At best, his attitude “demonstrates an attitude of retroactive self-justification” (Decision, para. 66). In the Commissioner’s submission, the Member has demonstrated no insight whatsoever into the seriousness of his conduct.

13. The Member’s treatment and reliance on his record of service is a further aggravating factor. The Member has worn his long service in the VPD as a shield to render him impervious to this process. He attempted to rely on his length of service to demonstrate that he would never have taken the actions. That attitude is wholly unbecoming of a senior member of the police force.

14. Among the other aggravating or mitigating factors to be considered, a lack of credibility is a serious aggravating factor. The Member showed himself to lack all credibility. As noted in the Decision:

- a. The “case clearly turns on credibility” (Decision, para. 58), and the Member’s version of events “are simply not credible” (Decision, para. 64).
- b. At the hearing, the Member resiled from his position he had a conversation with the Complainant following the incident “only after it became apparent it could not be sustained”. It was “not credible that the Member would be mistaken ... about who he was talking with after the incident”, and his statements about the conversation “were no more than self-serving contrivance” (Decision, para. 63).
- c. The Member’s description of the nature of the contact as an inadvertent tap was “disingenuous and unnatural”, and inconsistent with his behaviour immediately thereafter (Decision, para. 64).
- d. The Member attempted to deny having apologized for the incident, which was a “tortured reconstruction”. The member clearly knew he had acted inappropriately (Decision, para. 64).
- e. The Member’s statement that he decided not to speak to the Complainant so as to not make a big deal of her comportment “is not credible”, as his physical intervention was a much bigger deal (Decision, para. 65).
- f. The Member’s attempts to characterize his actions as justified, then inadvertent, and nonetheless professional, were “self-serving and revisionist” (Decision, para. 66).

15. This lack of credibility represents a complete abdication of the moral and ethical standards expected of a person holding the rank of Inspector.

B. An Approach that Educates and Corrects is Inappropriate

16. Education and correction are not appropriate or workable for these instances of misconduct.

17. With respect to the June 9 Email, the member ought to have known that his behaviour was wholly inappropriate, yet he showed no insight, demonstrating that education would have no effect. The Member has served on the police force for forty years. He acted as a discipline authority for one and a half years, and was involved in over 120 investigations. He confirmed that because of that experience, he understood the requirements of confidentiality in relation to investigations (Decision, para. 53). If that experience did not teach him the importance of respecting confidentiality in investigations, and the chilling effect that would result from such conduct, then no further education could possibly be effective. An educative approach is unworkable.

18. With respect to the slap to the buttock, the member repeatedly reinforced that he was well aware that a slap to the buttock is inappropriate behaviour, but refused to accede to the seriousness of the conduct. He stated that if he had slapped the member, he would have held himself accountable (Decision, para. 47). When discussing his relationship with the civilian jail employee and jail staff, he explained that he considered it his responsibility to ensure the workplace was respectful (Decision, para. 48). The member has already participated in three respectful workplace seminars (Decision, para. 67). Nevertheless, he refused to admit that, if substantiated, his behaviour would constitute *Police Act* misconduct.

19. Given that the Member understands the importance of a respectful workplace and avoiding physically disciplining members, yet shows no insight into the seriousness of his own behaviour or the standard of conduct for an Inspector, further respectful workplace training would have no effect, and is unworkable.

20. Moreover, the misconduct in this case is among the most serious forms of misconduct, as it thoroughly violates the core standards expected of senior police officers. An approach that is aimed at correction and education would bring the administration of

justice into disrepute. To the contrary, any sanction must denunciate and deter similar behaviour by others.

C. The Appropriate Disciplinary and Corrective Measures in this Case

21. Taken together, these factors suggest that the Member should not be allowed to continue in a senior leadership position within the department. The Commissioner submits that a permanent demotion to the level of constable is appropriate.

22. Police officers, particularly senior officers, are held to a high moral standard. Modern democratic policing is grounded in Sir Robert Peel's Nine Principles of Law Enforcement, which delineate the basis of policing by consent. Among those principles, police must maintain a relationship with the public that gives reality to the tradition that "the police are the public and the public are the police". They must preserve their legitimacy not by catering to public opinion, but by constantly demonstrating absolute impartial service to the law. They must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.¹

23. Throughout this hearing, the Member has maintained that his conduct does not constitute *Police Act* misconduct. That attitude, taken together with his blatant and deliberate interference with the investigation by way of the June 9 Email, call into question his ability to serve impartially and voluntarily observe the law: the foundation for policing by consent. A person who cannot meet these standards should not be in a senior leadership position with any police force.

24. The Member's self-serving, revisionist, and untruthful evidence, and general lack of credibility, both in this proceeding and before the investigator, likewise call into question the Member's suitability to serve as a senior officer. He has shown himself to lack integrity and honesty, and shown disrespect for testimonial trustworthiness. The public has a right to expect and demand integrity from police officers, which ensures public confidence in

¹ Appendix A, Ottawa Police Service, *Sir Robert Peel's Principles of Law Enforcement, 1829*, Available on-line: <https://www.ottawapolice.ca/en/about-us/Peel-s-Principles-.asp>

the fair, lawful and trustworthy administration of justice. The Member's lack of honesty in this proceeding cannot be condoned.

25. Moreover, the fulcrum for *Police Act* misconduct is conduct that would bring disrepute to the police in the eyes of the public. Where a senior member is unable to admit that his conduct, if substantiated, would impact the public perception of policing, he has demonstrated a disdain for the public and the interest that they have in policing.

26. In short, the Member has failed to demonstrate the moral character necessary to serve the public as a leader in the police and in the public service. The Member should be permanently demoted to the level of constable.

IV. Conclusion

27. In all of the circumstances, the Commissioner submits that an approach aimed at education and correcting the Member is unworkable, and would bring the administration of justice into disrepute. The seriousness of the misconduct, the Member's failure to show insight into his conduct, the Member's attitude toward the process, and his total lack of credibility demonstrate that he is not qualified to hold a leadership position within the police. The Commissioner says that a permanent demotion to the position of constable is appropriate.

All of which is respectfully submitted.



Dated this 17th day of September,
2018.

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

APPENDIX A

Sir Robert Peel's

Principles of Law Enforcement 1829

- 1** The basic mission for which the police exist is to prevent crime and disorder.
- 2** The ability of the police to perform their duties is dependent upon public approval of police actions.
- 3** Police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
- 4** The degree of cooperation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
- 5** Police seek and preserve public favor not by catering to the public opinion but by constantly demonstrating absolute impartial service to the law.
- 6** Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.
- 7** Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
- 8** Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary.
- 9** The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.

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