

CONCLUSION OF PROCEEDINGS

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

OPCC File: 2018-14290
January 22, 2019

To: [REDACTED] (Complainant)

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

And to: The Honourable Mr. Wally Oppal, Q.C. (Discipline Authority)
Retired Judge, BC Court of Appeal

And to: [REDACTED] (external Prehearing Conference Authority)
c/o West Vancouver Police Department
Professional Standards Section

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

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

On January 4, 2018, the Office of the Police Complaint Commissioner (OPCC) received a registered complaint from [REDACTED] describing his concerns with members of the Vancouver Police Department (VPD) on [REDACTED].

[REDACTED] reported that he was a guest at the [REDACTED] on the night of the incident. The [REDACTED] was hosting a New Year's Eve party and [REDACTED], along with four people from his group, obtained instructions from reception staff on how to check out the event. They took the elevator to the conference level and security staff escorted them to the ticket stand. The group decided not to purchase tickets and they started to walk away. The group became separated and [REDACTED] was walking in the wrong direction when a security guard grabbed his wrist and advised that he needed a wristband to be there. [REDACTED] pulled his hand away, explained that he was a guest at the [REDACTED] and began walking to the elevator.

As [REDACTED] was walking toward the elevator, a VPD officer grabbed his shoulder and asked if he had a wristband. [REDACTED] responded, "No." The officer stated, "You're coming with me." [REDACTED] replied that he was returning to his [REDACTED] room. The officer grabbed [REDACTED]'s arm, pinched him and, at some point, began kneeling his right leg. [REDACTED] sustained bruises as a result of the use of force. The officer attempted to move [REDACTED] to the front door of the [REDACTED] and [REDACTED] kept explaining that he was a [REDACTED] guest.

The police escorted [REDACTED] to a private room, validated his identification and then released him. He was not intoxicated. [REDACTED] asserted that the officer, "used his badge and power excessively which caused public humiliation and bodily injury."

Additional information provided by [REDACTED] revealed that one officer informed [REDACTED] "Keep talking and you're going to jail for the rest of the night."

The allegations contained in [REDACTED]'s complaint were reviewed and the allegations concerning his detention, the force used on him, and the comment made to him were determined to be admissible. Accordingly, the complaint was forwarded to the Professional Standards Section of the VPD for investigation.

Vancouver Police Professional Standards investigator, [REDACTED], conducted an investigation into [REDACTED]'s allegations and on September 4, 2018, he submitted the Final Investigation Report to the Discipline Authority, which included the addition of a fourth allegation.

In the report, [REDACTED] identified the following allegations of misconduct:

1. That on [REDACTED], [REDACTED] [REDACTED] and [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* by in the performance, or purported performance of duties, intentionally or recklessly detaining [REDACTED] without good and sufficient cause.
2. That on [REDACTED], [REDACTED] [REDACTED] and [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by in the performance, or purported performance of duties, intentionally or recklessly using unnecessary force on [REDACTED].
3. That on [REDACTED], [REDACTED] [REDACTED] and [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* by engaging in oppressive conduct towards [REDACTED].
4. That on [REDACTED], [REDACTED] [REDACTED] and [REDACTED] committed *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* by neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do.

On September 17, 2018, [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, [REDACTED] identified four allegations of misconduct against [REDACTED] [REDACTED] and [REDACTED]. He determined that the allegations of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B), 77(3)(a)(ii)(A), and 77(3)(a) of the *Police Act* against [REDACTED] [REDACTED] and [REDACTED] did not appear to be substantiated. [REDACTED] did

find that the evidence appeared to substantiate the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*. [REDACTED] offered the members a Prehearing conference in relation to this substantiated allegation and proposed a range of corrective and/or disciplinary measures to be: advice to future conduct; verbal reprimand; or written reprimand.

After reviewing the DA decision provided by [REDACTED], our office was of the view that there was a reasonable basis to believe that the decision in relation to the unsubstantiated allegations was incorrect, except in relation to [REDACTED] [REDACTED]'s role in allegation #3 which we agreed was not substantiated. Therefore, on October 16, 2018, the Police Complaint Commissioner (the Commissioner) appointed a retired judge to review this matter pursuant to section 117(1) of the *Police Act*. Pursuant to section 117(4) of the *Police Act* and based on a recommendation from the Associate Chief Justice of the Supreme Court of British Columbia, the Commissioner appointed retired judge Mr. Wally Oppal, Q.C. to review this matter and arrive at his own decision based on the evidence.

On October 31, 2018, upon review of the report and the evidence and records referenced in it, retired judge Mr. Oppal, Q.C. determined that the conduct of [REDACTED] [REDACTED] and [REDACTED] appeared to constitute misconduct in relation to the allegations of *Abuse of Authority* pursuant to sections 77(3)(a)(ii)(B) and 77(3)(a)(ii)(A) of the *Police Act*. Mr. Oppal found that the conduct in relation to *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* did not appear to be substantiated. Subsequently, pursuant to section 117(9), Mr. Oppal, Q.C. became the Discipline Authority in respect of this matter. Mr. Oppal, Q.C. offered a prehearing conference to [REDACTED] [REDACTED] and [REDACTED] [REDACTED] and the proposed disciplinary or correctives measures included advice as to conduct; a verbal or written reprimand; or requiring specified training pursuant to sections 126(1)(k), (j), (i), and (f) of the *Police Act*.

PREHEARING CONFERENCE (allegations #1 and #2)

Following the investigation conducted by [REDACTED], Mr. Oppal as the new Discipline Authority determined the evidence appeared to substantiate the allegations of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) and 77(3)(a)(ii)(A) of the *Police Act* by [REDACTED]
[REDACTED]

A prehearing conference was offered to [REDACTED] [REDACTED] and was held on December 14, 2018, before [REDACTED] of the West Vancouver Police Department as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

Allegation #1: *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B)
Written reprimand

Allegation #2: *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A)
Verbal reprimand

██████████ provided oral submissions to ██████████ in relation to this incident. ██████████ noted how the events of ██████████, significantly impacted him in terms of his embarrassment in front of family and friends. ██████████ noted how the actions of ██████████ were excessive and based on the information of an untrained security guard.

A report following the prehearing conference was received at our office on December 20, 2018. In reviewing the investigation conducted by ██████████ and considering all the relevant factors in this case, the Prehearing Conference Authority has appropriately considered the aggravating and mitigating factors pursuant to section 126 and the discipline imposed is appropriate based on the circumstances.

We note that ██████████ ██████████ was the primary member involved in the interaction with ██████████ on the night of the incident and took the lead in engaging with ██████████. We also note that the discipline imposed by ██████████ is within the range outlined by Mr. Oppal in his section 117 review. Additionally, we have taken into consideration the proactive efforts undertaken by ██████████ ██████████ post incident to educate himself with program and training modules related to decision making and communications. The modules taken obviates the need for any additional training.

It is noted that ██████████ ██████████ has taken full responsibility for his role in this incident which included engaging in related training modules. The intent of the Act is to consider an approach that seeks to correct and educate the member concerned as long as that approach does not bring the administration of police discipline into disrepute. We do not believe that the discipline imposed here, within the range outlined by Mr. Oppal, would bring the administration of police discipline into disrepute.

PREHEARING CONFERENCE (allegation #4)

Following the investigation conducted by ██████████, ██████████ as the original Discipline Authority determined the evidence appeared to substantiate the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* by ██████████ ██████████

A prehearing conference was offered to ██████████ ██████████ and was held on October 24, 2018, before ██████████ of the VPD as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

Allegation #4: *Neglect of Duty* pursuant to section 77(3)(m)(ii)

Advice as to conduct

A report following the prehearing conference was received at our office on October 24, 2018. In reviewing the investigation conducted by ██████████ and considering all the relevant factors in this case, ██████████ has appropriately considered the aggravating and mitigating factors pursuant to section 126 and the discipline imposed is appropriate based on the circumstances.

We agree with [REDACTED] that the use of force on a citizen is a serious matter that should be properly documented. Proper documentation of incidents such as this, which includes police notes and reports, serves to refresh memory, justify decisions, and record police actions and evidence. Vancouver Police Policy outlines that accurate, detailed, and comprehensive documentation is the foundation of effective police work. Not having any police reports nor having any substantive reference to the incident in the officer's notes does not promote accountable and transparent policing. It also places the *Police Act* investigation at a disadvantage in not being able to review, assess, and compare any documentation made at the time of the incident.

It is noted that [REDACTED] [REDACTED] has taken full responsibility for the misconduct and understands what the expectations and requirements are after force has been applied. The intent of the Act is to consider an approach that seeks to correct and educate the member concerned as long as that approach does not bring the administration of police discipline into disrepute. I do not believe that the discipline imposed here would bring the administration of police discipline into disrepute.

Therefore, the agreements reached at the prehearing conferences are approved and the resolution is final and conclusive. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with the *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.

[REDACTED]

Investigative Analyst

cc. [REDACTED], Vancouver Police Department