



Office of the
Police Complaint Commissioner

British Columbia, Canada

NOTICE OF REVIEW ON THE RECORD

Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Admissible Complaint against
Special Municipal Constable Rajdeep Mann of the Vancouver Police Department**

OPCC File: 2017-14263
January 27, 2020

To: Mr. Colin Dowler (Complainant)

And to: Special Municipal Constable Rajdeep Mann, #9555 (Member)

And to: Superintendent Steve Eely (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On December 27, 2017, the Office of the Police Complaint Commissioner (OPCC) received a copy of Mr. Colin Dowler's registered complaint describing his concerns with members of the Vancouver Police Department (VPD) on November 11, 2017.
2. Mr. Dowler reported that on November 11, 2017, he attended a concert at the Vogue Theatre in Vancouver, British Columbia. Mr. Dowler reported he was ejected by bouncers from the Vogue Theatre and then approached by two members of the VPD. The VPD members stated, "We saw you push him" to Mr. Dowler before arresting him and transporting him to VPD jail cells.
3. Mr. Dowler further reported that he was taken to VPD cells where he was held for approximately 2 hours. He was then escorted to the booking counter and given a form to sign. The member at the booking counter reportedly said to him, "Fucking sign it," referring to the form. Mr. Dowler questioned the member's use of language as Mr. Dowler had just been reprimanded for swearing. In response, the member allegedly stated, "Fucking sign it asshole." Mr. Dowler stated he would only sign the form once he had finished reading it and understood it.

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4. The member then allegedly came around the counter and grabbed Mr. Dowler, who yelled, "Don't hurt me. I'll sign!" Mr. Dowler reported he was violently pushed away from the counter, with his arms twisted behind his back, choked, and then taken to ground. Mr. Dowler reported that once he was on the ground one member twisted his arm over and bent his wrist. Another two members were controlling his upper and lower body and a female member removed his wedding ring and shoes. Mr. Dowler was taken back to cells and released later with a ticket for intoxication in a public place.
5. Mr. Dowler's complaint was determined to be admissible and was forwarded to the Vancouver Police Department for investigation. On February 21, 2018, the VPD initiated an investigation into two allegations of *Abuse of Authority* against multiple members. Those allegations were related to the arrest of Mr. Dowler outside the Vogue Theatre and for the physical force used against Mr. Dowler at the VPD jail. The VPD also initiated a third allegation of *Discourtesy* in relation to Special Municipal Constable (SMC) Mann swearing and using profane language against Mr. Dowler at the booking desk of the VPD jail.
6. Vancouver Police Professional Standards investigator, Sergeant Jason Gray, conducted the investigation into this matter. During the course of the investigation, additional video evidence was uncovered which appeared to show SMC Mann and another SMC handling Mr. Dowler's cell phone after the alleged use of force incident at the booking counter, and SMC Mann apparently deleting a video from that phone. Mr. Dowler had alleged that he had recorded the interactions at the booking counter. SMC Mann was questioned several times about his actions in relation to Mr. Dowler's cell phone, and he maintained, despite the available video evidence, that he did not delete the video from Mr. Dowler's cell phone. The investigator therefore added an allegation of *Discreditable Conduct* for deleting the video and an allegation of *Deceit* with respect to SMC Mann's evidence.
7. On October 10, 2018, Sergeant Gray submitted the Final Investigation Report to the Discipline Authority. Based on Sergeant Gray's Final Investigation Report, Inspector Jeff Danroth, as the Discipline Authority, identified the following five allegations of misconduct pursuant to section 112(c) of the *Police Act*:
 - 1) *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* for intentionally or recklessly making an arrest without good and sufficient cause.
 - 2) *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on Mr. Dowler.
 - 3) *Discourtesy* pursuant to section 77(3)(g) of the *Police Act* for failing to behave with the courtesy due in the circumstances towards a member of the public in the performance of duties as a member.

- 4) *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 member knows or ought to know would likely bring discredit on the municipal police department.
 - 5) *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, which is, in the capacity of a member or former member, making or procuring the making of any oral or written statement that to the member's knowledge is false or misleading. This allegation pertains to SMC Mann in relation to statements he made during his interview into this matter.
8. Pursuant to section 112(2) (d) of the *Police Act*, Inspector Danroth determined that the evidence appeared to substantiate Allegations #2, #3, #4 and #5 against SMC Mann and remitted those allegations to a discipline proceeding. He further determined that Allegation #1 did not appear to be substantiated and that the evidence did not support substantiation against any other member in relation to Allegations #2 and #4.

Discipline Proceeding and Proposed Discipline

9. A discipline proceeding was held pursuant to sections 123 and 124 of the *Police Act*, with Superintendent Steve Eely acting as the Discipline Authority. On November 20, 2018, Superintendent Eely issued the Review of Discipline Proceedings pursuant to section 133 of the *Police Act*. Superintendent Steve Eely, made the following determinations in relation to the allegations:

Allegation 2: *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act*.
Finding: Unsubstantiated

Allegation 3: *Discourtesy* pursuant to section 77(3)(g) of the *Police Act*.
Finding: Substantiated

Allegation 4: *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*.
Finding: Unsubstantiated

Allegation 5: *Deceit* pursuant to section 77(3)(f) of the *Police Act*.
Finding: Unsubstantiated

Mr. Dowler's request for a Review on the Record or a Public Hearing

10. Mr. Dowler was provided a copy of Superintendent Eely's findings in relation to the allegations of misconduct and determinations on appropriate disciplinary and/or corrective measures at the discipline proceeding. Mr. Dowler was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Police Complaint Commissioner ("the Commissioner") pursuant to section 133(5) of the *Police Act* to arrange a Public Hearing or Review on the Record.

11. On December 17, 2019, the Commissioner received a request for a Review on the Record or a Public Hearing from Mr. Dowler. Mr. Dowler agreed with the findings in relation to Allegation #2, but not with the findings in relation to the remaining allegations.

Decision

12. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.
13. I have reviewed the record of the disciplinary decision, and the associated determinations, pursuant to section 138 of the *Police Act*, and I have decided that there is a reasonable basis to believe that the Discipline Authority's determination as to whether misconduct has been proven with regard to *Abuse of Authority*, *Discreditable Conduct*, and *Deceit* are incorrect pursuant to section 125(1) of the *Police Act*.
14. I have determined that based on evidence obtained during the investigation, including video, Superintendent Eely erred in finding that Mr. Dowler's actions at the booking counter necessitated his return to cells and that in doing so, SMC Mann's use of force was not oppressive, reckless or unnecessary.
15. I have further determined that Superintendent Eely erred when he determined that SMC Mann did not commit *Discreditable Conduct* because he had no intent to delete the video, rather that he received it in a primed state and hitting a single button could delete it accidentally. The video evidence and Constable Mann's evidence throughout this matter do not support the finding that the video was accidentally deleted.
16. With respect to the *Deceit* allegation, I have determined that Superintendent Eely erred in determining that SMC Mann's statement that he had not deleted the video was the result of a mistake rather than knowingly providing false or misleading evidence to the investigator. In this regard, I prefer the investigator's analysis in the FIR, which stated: "*Sgt. Gray provided SMC Mann at least three opportunities to review the complaint, the allegations, his own notes and the Jail CCTV to refresh his memory. Specifically, on June 20th, 2018 and September 17, 2018 SMC Mann was provided opportunity to review the Jail CCTV before his interview with Sgt. Gray.*" However, SMC Mann maintained throughout his interviews that he did not delete the video and told the investigator he would have advised his NCO if he had seen the video. The investigator determined that SMC Mann knew he had deleted the video and had intentionally tried to deceive the investigator when he denied doing so.

17. I have determined that a Review on the Record is necessary in the public interest. In determining that a Review on the Record is necessary in the public interest, I have considered several relevant factors, including but not limited to the following:
 - a) The nature and seriousness of the complaint or alleged misconduct;
 - b) The conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints, or the disciplinary process;
 - c) The disciplinary or corrective measures proposed are inappropriate or inadequate;
 - d) The Discipline Authority's interpretation or application of this Part or any other enactment was incorrect.
18. I have further determined that at this time, a Public Hearing is not necessary in this particular matter. It will not be necessary to examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Further, a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. A Review on the Record is a more effective and efficient means of adjudicative review in these circumstances.
19. Accordingly, pursuant to section 141 of the *Police Act*, I am arranging a Review on the Record.
20. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or the service record of the member.
21. Pursuant to section 141(5) of the *Police Act*, SMC Mann, or his agent or legal counsel may make submissions concerning the matters under review.
22. Pursuant to section 141(6) of the *Police Act*, the Police Complaint Commissioner or his commission counsel may make submissions concerning the matters under review.
23. Pursuant to section 141(7) (b) of the *Police Act*, the Adjudicator may permit the Discipline Authority to make submissions concerning the matters under review.
24. It is alleged that SMC Mann committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
 - i. That on November 12, 2017, Special Municipal Constable Rajdeep Mann, committed the disciplinary default of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on Mr. Dowler.

- ii. That on November 12, 2017, Special Municipal Constable Rajdeep Mann, committed the disciplinary default of *Discourtesy* pursuant to section 77(3)(g) of the *Police Act* for failing to behave with the courtesy due in the circumstances towards a member of the public in the performance of duties as a member.
- iii. That on November 12, 2017, Special Municipal Constable Rajdeep Mann, committed the disciplinary default of *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 member knows, or ought to know, would be likely to bring discredit on the municipal police department.
- iv. That on June 20, 2018, and September 17, 2018, Special Municipal Constable Rajdeep Mann, committed the disciplinary default of *Deceit* pursuant to section 77(3)(f) of the *Police Act* which is in the capacity of a member, making or procuring the making of any oral or written statement that, to the member's knowledge, is false or misleading.

THEREFORE:

- 25. A Review on the Record is arranged pursuant to section 141 of the *Police Act*.
- 26. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Mr. Justice Ron McKinnon, Retired Supreme Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 27th day of January, 2020.



Clayton Pecknold
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