

CONCLUSION OF PROCEEDINGS

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

OPCC File: 2018-14701

November 21, 2019

- To: [REDACTED] (Members)
[REDACTED]
c/o South Coast British Columbia Transportation Authority Police Service
Professional Standards Section
- And to: The Honourable Judge Ron McKinnon, (ret'd) (Discipline Authority)
Retired Judge of the Supreme Court of British Columbia
- And to: [REDACTED] (Prehearing Conference Authority)
c/o Victoria Police Department
Professional Standards Section
- And to: Deputy Commissioner Jennifer Strachan (External Investigative Agency)
c/o Royal Canadian Mounted Police
Professional Standards Section
- And to: [REDACTED]
c/o South Coast British Columbia Transportation Authority Police Service
Professional Standards Section

On May 1, 2018, the Office of the Police Complaint Commissioner (OPCC) received information from the South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) pursuant to section 89 of the *Police Act* in relation to an incident which occurred on [REDACTED] involving [REDACTED] and [REDACTED], and a member of the public.

SCBCTAPS Professional Standards Unit identified potential allegations of misconduct against [REDACTED] and [REDACTED] after reviewing the video of the two officers arresting a 17 year-old male who was suspected to be intoxicated at the [REDACTED] SkyTrain Station. The incident had also been the subject of a Responsible Officer Review (ROR) in accordance with SCBCTAPS policy, but that review had not identified any concerns with the conduct. Notably, the review did not appear to have involved a thorough examination of all the available evidence, including the CCTV video.

According to the information provided to the OPCC, on [REDACTED] and [REDACTED] responded to a call for assistance from [REDACTED] in relation to the 17 year-old male. [REDACTED] determined that he had grounds to arrest the male for breach of the peace, but when he reportedly attempted to effect that arrest, the male fled. [REDACTED] and [REDACTED] located the male and took him into custody, using force while doing so. When the officer's statements in the related police report were compared to the CCTV video of the incident, those statements did not appear to accurately account for the force used.

Pursuant to section 93 an investigation was ordered into this matter, specifically *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A) of the *Police Act* in relation to the allegations that [REDACTED] and [REDACTED] intentionally or recklessly used unnecessary force when arresting the affected person; and for *Deceit*, pursuant to section 77(3)(f)(i)(B) of the *Police Act* in relation to the allegations that [REDACTED] and [REDACTED] made an entry in an official document or record that, to their knowledge, was false or misleading.

Royal Canadian Mounted Police (RCMP) investigator, [REDACTED], conducted an investigation into this matter and on July 2, 2019, he submitted the Final Investigation Report (FIR) to the Discipline Authority. In the report, [REDACTED] identified the above noted allegations of misconduct, *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A) of the *Police Act* and *Deceit*, pursuant to section 77(3)(f)(i)(B) of the *Police Act*.

On July 9, 2019, [REDACTED] as the initial Discipline Authority, issued his decision pursuant to section 112. In his decision, [REDACTED] determined that neither allegation was substantiated based on the evidence contained in the FIR.

On August 2, 2019, the Police Complaint Commissioner appointed the Honourable retired Provincial Court Judge Ron McKinnon to review this matter pursuant to section 117 of the *Police Act* as he considered there was a reasonable basis to believe that the decision of the initial Discipline Authority was incorrect.

On September 26, 2019, upon review of the FIR and the evidence and records referenced in it, the Honourable retired Judge Ron McKinnon determined that the conduct of [REDACTED] and [REDACTED] appeared to constitute misconduct, specifically *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A). Subsequently, pursuant to section 117(9), the Honourable retired Judge Ron McKinnon became the Discipline Authority in respect of this matter. The Honourable retired Judge Ron McKinnon offered a prehearing conference to [REDACTED] and [REDACTED] and the proposed disciplinary or correctives measures included the sanctions incorporated in sections 126(1)(d) through (k).

On November 1, 2019, [REDACTED] counsel for the respondent members, advised the OPCC that [REDACTED] and [REDACTED] had accepted the offer of a prehearing conference.

A prehearing conference was held on November 18, 2019, before [REDACTED] as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

1 - Abuse of Authority -

- 1) Verbal Reprimand, section 126(1)(j) of the Police Act; ([REDACTED] only); and,
- 2) Direction to undertake training, section 126(1)(f) of the Police Act - Specifically, the member is to undergo training with regard to the apprehension, handcuffing and escorting of uncooperative subjects. ([REDACTED] and [REDACTED])

A report following the prehearing conference was received at our office on November 19, 2019. In reviewing the investigation conducted by [REDACTED] 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 disciplinary measures imposed at the prehearing conference were both correct and appropriate with respect to the circumstances.

Therefore, the agreement reached at the prehearing conference is 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 *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.

The OPCC recognizes the Responsible Officer Review program as a valuable mechanism to ensure accountability and to provide SCBCTAPS officers tactical feedback, or training, as necessary, following the use of particular levels of force. The effectiveness of the program is dependent upon the thoroughness of the review. The OPCC therefore suggests that any supervisor conducting an ROR includes all available evidence in their review; and confers with the SCBCTAPS Professional Standards Unit during their review.

[REDACTED]

[REDACTED]
Investigative Analyst

cc: [REDACTED], Royal Canadian Mounted Police